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ENVIRONMENTAL COMMISSIONER OF ONTARIO
ANNUAL REPORT 1994 - 1995

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Eva B. Ligeti
LL.B., LL.M.
Commissioner

Eva B. Ligeti
LL.B., LL.M.
Commissaire

June 1996

The Honourable Allan McLean
Speaker of the Legislative Assembly
Room 180, Legislative Building
Legislative Assembly
Province of Ontario
Queen's Park

Dear Mr. Speaker:

In accordance with section 58 of the *Environmental Bill of Rights, 1993*, I am pleased to present the 1994-1995 Annual Report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

Sincerely,

A handwritten signature in cursive script, reading "Eva B. Ligeti".

Eva Ligeti
Environmental Commissioner of Ontario

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A MESSAGE FROM THE ENVIRONMENTAL COMMISSIONER OF ONTARIO

Dear Reader:

As government explores ways to work with fewer resources, the need for open, transparent and participatory environmental decision making is more important than ever. Even in a climate of fiscal restraint, environmental protection and sustainability are not only possible, they are absolutely necessary to the future well-being of this province.

Ontario's environmental values have matured over the past 25 years. As the government moves to review and reform environmental safeguards, the challenge will be to retain what we have accomplished and to ensure future environmental protection and competitive economic development.

The *Environmental Bill of Rights* is instrumental to meeting Ontario's environmental goals. It asks us to balance the desire for quality of life, future prosperity and environmental sustainability. Our success depends on the willingness of government ministries to honour the purposes of the *Environmental Bill of Rights* and to improve the way government manages the natural environment.

This report is the beginning of my examination of the stated environmental values of Ontario ministries, and how they are reflected in laws, policies and practices. We are beginning to appreciate the full dimension of the relationship between the environment and other social, economic and scientific factors. The *Environmental Bill of Rights* recognizes that connection, and insists that we honour it when we make decisions that affect environmental quality. It is my job to make sure the connection is honoured.

Ontario's environmental values are deeply rooted. The people of this province expect a safe and healthy environment in which to live, work and play. As the government streamlines its operations in the coming years, the *Environmental Bill of Rights* will open the doors to all Ontarians and provide them with the opportunity to participate in decisions that have environmental consequences.

Eva Ligeti

Environmental Commissioner of Ontario

PART 1: INTRODUCING THE ENVIRONMENTAL BILL OF RIGHTS

The *Environmental Bill of Rights* (EBR) gives all Ontario residents new ways to participate in government decisions that affect the natural environment. Other Canadian jurisdictions have “environmental rights” legislation, but Ontario’s *Environmental Bill of Rights* goes further. It recognizes that the people of Ontario have a right to a healthful environment and a common goal to protect, conserve and restore the environment for the benefit of present and future generations.

The Environmental Bill of Rights

Preamble

- The people of Ontario recognize the inherent value of the natural environment.
- The people of Ontario have a right to a healthful environment.
- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.
- While government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.

Purposes

- Protect, conserve and restore the integrity of the environment
- Provide sustainability
- Protect the right of Ontario residents to a healthful environment
- Prevent, reduce and eliminate the use, generation and release of pollutants that unreasonably threaten the integrity of the environment
- Protect and conserve biological, ecological and genetic diversity
- Protect and conserve natural resources, including plant life, animal life and ecological systems
- Encourage the wise management of our natural resources, including plant life, animal life and ecological systems
- Identify, protect and conserve ecologically sensitive areas or processes
- Provide ways for Ontario residents to participate in environmental decision making
- Increase government accountability for its environmental decision making
- Increase access to the courts for Ontario residents who want to protect the environment
- Improve protection for employees who take action against their employers for harming the environment

The *Environmental Bill of Rights* gives government the primary responsibility for achieving this goal, but it also gives Ontario residents tools to take part in the process. And it assigns environmental responsibility to, and promotes sustainability among, diverse government ministries.

***Ministries* Prescribed By
The Environmental Bill of Rights***

- | | |
|---------------------------------------|----------------------------------|
| • Environment and Energy | • Economic Development and Trade |
| • Natural Resources | • Health |
| • Northern Development and Mines | • Housing |
| • Consumer and Commercial Relations | • Labour |
| • Municipal Affairs | • Management Board Secretariat |
| • Agriculture, Food and Rural Affairs | • Transportation |
| • Culture, Tourism and Recreation | • Finance** |

* On September 27, 1995 the Ontario Government tabled Bill 1 amending the Executive Council Act. If passed, this law will result in the following reconfiguration of the ministerial portfolios for three ministries under the EBR: Ministry of Municipal Affairs and Housing, Ministry of Citizenship, Culture and Recreation, and the Ministry of Economic Development, Trade and Tourism.

** The Ministry of Finance is no longer a prescribed ministry as of November 29, 1995.

Access to information is a key benefit of the *Environmental Bill of Rights* and this report shows the new ways Ontarians can use information to make sure the government works efficiently and cost-effectively, and keeps the environment safe and clean. Now, Ontarians can call government ministries to account for the environmental decisions they make.

The Environmental Bill of Rights

Public Rights To Participate

- The right to get notice of, and comment on, proposed policies, Acts, regulations and instruments that may affect the environment
- Access to the Environmental Registry, a computer bulletin board of proposals, decisions and other information related to the Environmental Bill of Rights
- The right to appeal certain ministry decisions
- The right to ask a minister to change or eliminate existing environmental policies, Acts, regulations and instruments
- The right to ask a ministry to consider the need for new policies, Acts and regulations
- The right to ask a ministry to investigate contraventions of environmental Acts, regulations and instruments
- The right to sue someone (e.g., a polluter) for harming a public resource
- The right to sue for personal damages if an environmentally harmful public nuisance causes direct economic or personal loss
- The right to whistleblower protection

The *Environmental Bill of Rights* is a genuine break with the past. It has the power to build understanding of the risks and benefits of environmental decisions and it speaks to the connection between actions and outcomes. For example, under the *Environmental Bill of Rights*, building a road is not just a transportation issue. It is also an environmental activity that affects the quality of air, water, land, plants, animals and people. The *Environmental Bill of Rights* asks all of us to seek better environmental solutions through shared knowledge, participation, responsibility and accountability.

PART 2: THE MANDATE OF THE ENVIRONMENTAL COMMISSIONER OF ONTARIO

The *Environmental Bill of Rights* calls for the five-year appointment of an Environmental Commissioner of Ontario. I began my term as Ontario's first Environmental Commissioner on May 30, 1994.

My primary responsibility is to review ministry compliance with the *Environmental Bill of Rights* and support political accountability by reporting independently to the Legislative Assembly of Ontario. As an officer who reports directly to the Legislative Assembly, not to a government minister, I have the right and responsibility to exercise my duties impartially and without undue interference.

For insight on interpreting my mandate, I looked at the roles of the Provincial Auditor, the Ombudsman, the Information and Privacy Commissioner, and similar officers in jurisdictions outside Ontario. For example, I corresponded with Helen Hughes, New Zealand's Parliamentary Commissioner of the Environment, whose goal is dispute resolution and finding the best possible solutions to environmental issues.

After careful reflection, I chose to pursue my mandate with a combination of informed leadership, fairness, understanding, open communication and the exploration of workable solutions.

The Environmental Commissioner of Ontario

Mandate

- Review implementation of the *Environmental Bill of Rights*
- Review ministries' compliance with the *Environmental Bill of Rights*
- Provide guidance to ministries on complying with the *Environmental Bill of Rights*
- Assist ministries in providing educational programs about the *Environmental Bill of Rights*
- Provide public education programs about the *Environmental Bill of Rights*
- Advise and assist people who want to participate in the *Environmental Bill of Rights* decision-making processes
- Review use of the Environmental Registry
- Review ministerial decisions to exempt proposals from being placed on the Environmental Registry
- Review the use of appeals and court actions by the public
- Review the way ministries process Applications for Review and Investigation
- Review use of whistleblower protection rights under the *Environmental Bill of Rights*
- Report annually to the Legislative Assembly of Ontario
- Present special reports to the Legislative Assembly of Ontario

SETTING UP SHOP

Creating a new organization is not easy. I gratefully acknowledge the support of Legislative Assembly staff, particularly Mike Horn, Director of Facilities Management; Ellen Schoenberger, Director of Human Resources; Ajit Deshmukh, Director of Finance; and their staff.

Early advice and assistance from Erik Peters, Provincial Auditor; Roberta Jamieson, Ombudsman; Tom Wright, Information and Privacy Commissioner and his Executive Director, Judy Hubert, also proved invaluable. Dr. Peter Victor, Assistant Deputy Minister, Environmental Sciences and Standards Division, Ministry of Environment and Energy; Helle Tosine, Director, *Environmental Bill of Rights* Office, Ministry of Environment and Energy; and Sharon Suter, Manager, *Environmental Bill of Rights* Office, Ministry of Environment and Energy; were equally supportive.

Members of the Task Force on the *Environmental Bill of Rights* (see Glossary) shared with me their insight into the legislation and my role. John Macnamara, Michael Cochrane and Paul Muldoon were particularly helpful. Indeed, John Macnamara facilitated the development of an informal business network of industry representatives to complement my work.

The Interministerial Committee (see Glossary), a group of dedicated staff from 14 ministries who are key to the implementation of the *Environmental Bill of Rights*, also provided me with great assistance.

I owe many thanks to Ontario's environmental community leaders for helping to facilitate my work with environmental groups and for communicating to me the goodwill, support and concerns of the people of this province who are devoted to protecting and preserving Ontario's natural environment.

By December 31, 1995 I had built a solid policy, legal, education and administrative foundation reflecting not only the suggestions of these groups and individuals, but also, I hope, the spirit of the *Environmental Bill of Rights* itself.



PART 3: STATEMENTS OF ENVIRONMENTAL VALUES

WHAT IS A STATEMENT OF ENVIRONMENTAL VALUES?

The *Environmental Bill of Rights* requires each prescribed ministry to develop a Statement of Environmental Values (SEV) to guide ministry staff when they make environmentally significant decisions (see Glossary). The SEV should explain how a ministry will consider the environment when it makes decisions that may significantly affect the environment, and how it will integrate environmental factors with social, economic and scientific ones.

The SEV is a unique and innovative tool which will also assist the people of Ontario and me assess how each ministry complies with the environmental protection goals of the *Environmental Bill of Rights*.

Statements of Environmental Values

Each minister must prepare a Statement of Environmental Values that:

- Explains how the purposes of the EBR will be applied when the ministry makes environmentally significant decisions
- Explains how consideration of the purposes of the EBR will be integrated with social, economic, scientific and other considerations

HOW THE SEVS WERE DEVELOPED

By May 1994, the 14 ministries had posted their draft SEVs on the Environmental Registry for public comment until August, and were required to post final SEVs by November 1994. I urged all ministries to clarify what unique decision-making aspects of their work would affect the natural environment. I also emphasised the need for appropriate benchmarks.

External stakeholders had something to say too, and while most agreed the SEVs were a step forward, they pointed out these SEV weaknesses:

- No clear connections between types of decisions and potential environmental consequences
- No clear indication of how ministries will apply the purposes of the *Environmental Bill of Rights* in decision making
- No commitment to timely SEV review
- Inconsistent terminology among ministries
- Lack of verifiable statements
- No explanation of how each ministry will integrate the purposes of the *Environmental Bill of Rights* with other considerations
- Lack of program details

I asked the ministries for details about how their programs might significantly affect the environment, and to state their environmental values, then translate those values into specific activities and goals. Additional public consultation on their revised SEVs was encouraged.

However, the ministries did not agree with my interpretation of the function and content of the SEV. They consider the SEV a statement of philosophy which guides management. One Deputy Minister's words capture the ministries' general view: "If the SEVs were to set out goals within them, they would go beyond influencing policy decisions and become policy themselves." We must work together to resolve this difference in interpretation.

Each ministry amended its SEV with a clear undertaking to apply the purposes of the *Environmental Bill of Rights*, and to integrate those purposes with social, scientific, economic and other considerations. The ministries also agreed to review their SEVs and invite public comment after they had applied their SEV for about one year, then report to me in November 1995.

Ministries that consulted publicly received limited response. Reasons for this lack of response could include the fact that the SEVs were originally posted on the Registry in spring 1994, and that more advertising was necessary. (For my detailed review of the ministries' one-year reports, please contact my office for a copy of the Appendix to this report.)

How The Environmental Commissioner Evaluated The SEVs

To evaluate the SEVs, the Environmental Commissioner developed the following criteria:

- *Commitment to endorse and apply the purposes of the EBR*
- *Connection of ministry programs, policies and activities to the purposes of the EBR*
- *Commitment to integrate the purposes of the EBR with social, economic, scientific and other considerations when ministry staff make decisions, and how this will be achieved*
- *Description of classes of ministry decisions subject to consideration of EBR purposes*
- *Recognition of environmental issues related to the ministry's mandate*
- *Reference to government-wide or interministerial environmental initiatives and goals, such as 3Rs, the Green Workplace, and energy and water conservation*
- *Commitment to partnerships with other ministries and agencies on environmental initiatives, such as research, public education, equipment or facility sharing*
- *Commitment to good public consultation*
- *Commitment to monitoring SEV use and performance*
- *Commitment to periodic SEV review and revision after November 1995*
- *Use of plain language*

FUTURE SEV DEVELOPMENT

On their own, Statements of Environmental Values will not change government ministries. Instead, they must be accompanied by strong action plans, with clear purposes and goals. As such action plans, Environmental Management Systems are increasingly proving their worth in many Canadian companies.

Environmental Management Systems

Good management practices include:*

- *Setting objectives and goals; developing procedures to achieve them*
- *Defining and documenting responsibility, authority and interrelations of key personnel whose activities may affect the environment*
- *In-house verification requirements and procedures and providing adequate resources and personnel for verification activities*
- *Appointing a management representative to ensure standards are met and maintained*
- *Establishing communication and training programs to assure that responsible personnel are competent in this area*

** KPMG, The Canadian Environmental Management Survey, 1994.*

By remodelling their SEVs in line with current Environmental Management Systems, or developing a separate Environmental Management System to guide the application of their SEVs, ministries could achieve practical in-house action plans for managing the environmental aspects of their initiatives. Ultimately, this would connect the SEVs to measurable goals and help ministries report progress.

Canadian Corporate Environmental Reporting

NORANDA

Employees: approximately 13,000

Products/Activities: mining, metals, forest products, oil and gas

Annual Environmental Report:

- *Produced since 1991*
- *Sets goals for energy conservation and emissions of metals to water and air*
- *In 1995, Noranda reported: "We have met our goal in reducing energy needs. By the end of this year we will be very close to our target for air and water requirements."*

DOFASCO

Employees: over 7,000

Product: steel

Annual Environment, Health and Safety Report:

- Preface to the 1993 edition states: "We have identified quantifiable measures of performance. This helps to gauge our progress and maintain momentum while closing the gap between our current performance and targets. Wherever possible we have included benchmarks and targets for the key performance measures. This is an evolving process. We are working to refine and improve our benchmarking capabilities."

DOW CANADA

Employees: approximately 3,000

Product: chemicals

Annual Environmental Report:

- Produced for several years
- Includes inventory of chemical emissions, along with five-year emission projections, showing anticipated reductions

Now is the time for ministries to look seriously at Environmental Management Systems. Environmental Management Systems are not explicitly required by the *Environmental Bill of Rights*, but they could support the practical achievement of its goals.

The public's ability to participate and ultimately the success of the *Environmental Bill of Rights* depend on the ministries' willingness to produce quality SEVs. I will work with the people of Ontario and each ministry that requests my assistance to continue to enhance the application and effectiveness of the Statements of Environmental Values.

EVALUATING THE SEVS

My evaluation of each SEV follows. I evaluated ministry SEVs using two sets of criteria. The first set reflects the basic requirements of the *Environmental Bill of Rights* and public comments, and the second set assesses ministry commitment to the next steps in effective SEV implementation.

Please note that although several ministries were merged or reorganized beginning in the summer of 1995, those ministries have not yet updated their SEVs so I evaluated the SEVs as originally posted on the Environmental Registry.

MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS

In its SEV, the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) recognizes the purposes of the *Environmental Bill of Rights* and commits to applying them when it makes environmentally significant decisions. The Ministry values public input and commits to providing consultation opportunities.

However, much of this SEV is vague, with no mention of the Ministry's commendable initiatives like programs to reduce pesticide use and improve manure management. Indeed, one wonders why this SEV does not endorse Food Systems 2002, a provincial goal to cut use of agricultural pesticides in half by 2002.

The SEV makes no commitment to staff training on environmental issues, monitoring key environmental parameters, or reporting on progress toward environmental goals. Its silence on pollution prevention, foodland protection and protection of ecologically significant areas is striking.

What The Public Said:

"Consultation with stakeholders. This should be done before policy/program approval. We recognize that you later state that the 'Ministry values public input.' However, we believe that the public input process should be more formalized." Ontario Farm Environmental Coalition; August 5, 1994

"There is no provision to monitor losses of agricultural land in the province. It could monitor trends in foodland preservation, such as increases in non-farm ownership of farmland. Remedial and protective measures, such as the use of vegetation buffers along municipal drains and natural watercourses, could be tracked." Canadian Environmental Law Association and five other groups; August 15, 1994

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

The Ministry of Consumer and Commercial Relations (MCCR) commits to developing ways to assess and report annually on the implementation of its SEV. The SEV states that the Ministry's programs have several objectives that promote environmentally responsible decisions.

The SEV briefly outlines the Ministry's interest in the storage and handling of hydrocarbon fuels and pressurized liquids and gases. It points to the Ministry's goals to reduce associated emissions and contamination, but does not explain its responsibility for administering and enforcing the *Gasoline Handling Act*, a law that is prescribed under the *Environmental Bill of Rights*. Nor does the SEV identify any environmental issues connected with the Ministry's role in potentially environmentally significant areas like regulating boilers or motor vehicle repairs.

Beyond this, the Ministry weakly commits to public consultation and does not acknowledge the importance of staff training on environmental issues or the *Environmental Bill of Rights*, or for information or research on relevant environmental issues. Also missing is a recognition of the need to monitor or report environmental

parameters related to the Ministry's mandate, the need for clear objectives and measurable goals for the Ministry's environmental programs and policies, and the need to join with other ministries on environmental initiatives.

What The Public Said:

"In order to conform to the EBR's three primary purposes, and the Ministry's sensitivity to the environment, the Ontario government must ... establish mandatory cash deposits on all drink and other containers ... [and] ... set up collection depots in all LCBO outlets for deposit and non-deposit containers bought through LCBO." Individual; August 12, 1994

MINISTRY OF CULTURE, TOURISM AND RECREATION

The Ministry of Culture, Tourism and Recreation (MCTR) commits to using the Environmental Registry to collect input on environmentally significant policies, Acts and regulations, and promises to encourage open public consultation. The SEV also states MCTR will promote recreational opportunities to raise environmental awareness.

Unfortunately, this SEV makes no commitment to clear objectives or measurable goals for environmental programs and policies. It only briefly describes the Ministry's activities, provides little detail about how those activities are linked to the environment, and is silent on how it will incorporate environmental considerations into its daily decisions. Beyond that, there is no mention of partnering with other ministries and agencies on environmental initiatives, surprisingly since the Ministry does exactly that on recreational projects like trail-building for cyclists, pedestrians, hikers and snowmobilers.

The SEV makes no commitment to specific interministerial environmental initiatives like 3Rs programs, or energy and water conservation. Nor does it acknowledge the need for staff training on environmental issues or for information or research on environmental issues relevant to Ministry operations. This is regrettable since MCTR financially supports construction projects in recreational and natural areas throughout Ontario — projects likely to affect the environment.

What The Public Said:

"The draft SEV speaks only to the promotion side of Ministry programs. How will the Ministry incorporate the SEV when it reviews industry development proposals (i.e. reviews plans to build a new facility or expand an existing facility)?" Northern Ontario Tourist Outfitters Association; July 29, 1994

"We at the Hotel Association of Metropolitan Toronto (HAMT) support, in principle, the objectives of your draft." HAMT; May 27, 1994

MINISTRY OF ECONOMIC DEVELOPMENT AND TRADE

The Ministry of Economic Development and Trade (MEDT) promises to develop a process to integrate the purposes of the *Environmental Bill of Rights* into its decision making. It also commits to an *Environmental Bill of Rights* staff-awareness program and to encouraging waste reduction and conservation. The Ministry says it values public input and will provide public consultation opportunities.

Regrettably, the SEV is short on details about how the Ministry will integrate environmental considerations into its daily operations. The language in this SEV is vague and will no doubt make it hard for Ministry staff and the public to identify environmentally significant decisions.

Again, there is no mention of working together with other ministries and agencies, the need for information or research on relevant environmental issues, or the need for monitoring environmental parameters. Like many others, this Ministry's SEV does not commit to clear objectives or measurable goals, or to monitoring and reporting on progress towards those goals.

What The Public Said:

"Statements such as 'promoting a productive and efficient economy that is environmentally sustainable' and 'considering the environment in its decision making' may sound impressive. Yet how does one assess whether the Ministry is really adopting these guidelines in its daily functions?" Canadian Environmental Law Association and five other groups; August 15, 1994

MINISTRY OF ENVIRONMENT AND ENERGY

The Ministry of Environment and Energy (MOEE) commits to monitoring and evaluating environmental changes, noticeably one of only two ministries to do so in their SEV. The MOEE will consider cumulative effects on the environment, promote energy and water conservation, and encourage 3Rs programs to divert materials from waste disposal.

Unfortunately, considering MOEE's mandate, its SEV is generally disappointing. It is particularly troubling that environmentally significant programs, including high-profile waste-reduction initiatives, monitoring and reporting ambient air quality, and administering Ontario's environmental assessment legislation, go unmentioned. Without an overview of the Ministry's key environmental programs, research activities, or existing measurable targets for waste reduction, this SEV forfeits significant public education potential.

As well, the SEV contains no provision for working together with other ministries and agencies to meet environmental goals. Given that co-operation is often cost-effective, the SEV should set out ways for Ministry staff to pursue partnerships. Interestingly, other ministries have told me they rely on MOEE for advice and assistance when developing environmentally related policies.

What The Public Said:

"There does not appear to be a commitment to disseminating information and public outreach." Ontario Round Table on Environment and Economy (Secretariat); July 4, 1994

"Delays in decision-making may be caused by scientific uncertainty, which is a problem that has been addressed by the SEV. However, the SEV does not deal with the inherent delays in the Ministry's regulatory and decision-making processes." Kingston District Chamber of Commerce, L.I.F.E. Committee; August 15, 1994

"The Ministry should recognize MNR's policy principle that anticipating and preventing negative environmental impacts before undertaking new activities is less costly and more effective than correcting or curing environmental problems." Canadian Land Reclamation Association, Ontario Chapter; August 18, 1994

MINISTRY OF HEALTH

This SEV is superior in many ways. For example, the Ministry of Health (MOH) commits to stating if there is, or is not, a significant environmental effect before approving and implementing policies, directives, guidelines, strategies and advice. The Ministry will develop monitoring and reporting mechanisms for its environmental goals and will report annually on its Environmental Protection Program. That report will identify environmentally significant decisions.

The Ministry commits to water and energy conservation, and waste management and minimization strategies in its daily operations. It will also provide advice and training to assist staff apply the purposes of the *Environmental Bill of Rights*. The SEV makes managers accountable for SEV compliance.

The Ministry's SEV does not recognize the need for information or research about how health issues are connected to the environment or the need to monitor environmental and health parameters. In addition, environmental program objectives are too vague to measure.

What The Public Said:

"... an emphasis on addressing the particular waste problems of hospitals (i.e. bio-hazardous wastes, wastes associated with packaging materials, air pollutants from incinerators, etc.) needs attention." The Ontario Chamber of Commerce; August 15, 1994

"The ministry does address the role of environmental contaminants in some of its programs, but this section needs to be more explicit." Individual; August 15, 1994

"Greater recognition is required in the SEVs that the ministries themselves may impact the environment in program delivery and policy formulation. For example, the SEVs of the ministries of Health and Labour do not acknowledge this potential." Ontario Natural Gas Association; August 15, 1994

MINISTRY OF HOUSING

The Ministry of Housing (MHous) states its commitment to promoting energy efficiency, water conservation, efficient land and public housing use, along with reduction, reuse and recycling in internal operations. It also promises to facilitate 3Rs through its building regulations.

The SEV indicates MHous will monitor, review and report its progress in implementing environmental principles in its annual report. It will develop a SEV Implementation Plan, including a protocol for identifying decisions subject to the SEV and/or the Environmental Registry notice requirements.

The SEV describes parts of the Ministry's mandate that affect the environment, but gives no attention to how the Ministry will consider its SEV in specific decision-making areas like administering and reviewing the *Building Code Act* and the *Rent Control Act*. The SEV also ignores public education activities related to development standards and the Ministry's substantial involvement in large housing development projects both on green field sites and abandoned industrial lands.

Like others, this SEV makes no commitment to setting clear objectives or measurable goals for environmental programs and policies. Nor does it recognize the need for information or research on relevant environmental issues or for monitoring environmental parameters.

What The Public Said:

"Specific goals and objectives, targets, deadlines and evaluation procedures should be established. Include long-term health costs, social costs, maintenance, capital replacement costs and environmental costs in the decision to approve housing. The Province should establish goals and programs to encourage and require the use of environmentally responsible technology in all new projects and in retrofitted projects." Housing Development Resource Centre; August 15, 1994

"In our opinion, simply reviewing the environmental actions outlined in the existing strategic plan would have been sufficient and consistent with the EBR implementation and review requirements." Metropolitan Toronto Apartment Builders Association; August 11, 1994

MINISTRY OF LABOUR

In its SEV, the Ministry of Labour (MOL) states it will work with other ministries and agencies on environmental matters, is committed to environmentally sound practices, supports and promotes greening of its programs, and practises and promotes reduction, reuse and recycling in its daily operations. At the same time, it promises staff training on implementing and applying the purposes of the *Environmental Bill of Rights*. It also supports public participation.

Unfortunately, this SEV ignores the need for information and research on relevant environmental issues, and for monitoring and reporting on the Ministry's progress in meeting environmental goals. And while the Ministry encourages its employees to commit to consistent, measurable progress in implementing the Code of Practice, curiously no measurable goals are mentioned.

What The Public Said:

"Employees also need the right to refuse to pollute. This has been a significant criticism of the EBR process to date by all sectors of Labour." Windsor and District Labour Council; August 15, 1994

"The Statement is much too vague and requires a definition of sustainability. Defined goals or objectives need to be incorporated into the Statement and a plan on how the Ministry will accomplish these goals or objectives needs to be clearly defined." Ontario Chamber of Commerce; August 15, 1994

M A N A G E M E N T B O A R D S E C R E T A R I A T

The Management Board Secretariat (MBS) SEV is considerably stronger than many others. Of particular note, it includes practical examples of environmental activities, including the Green Workplace program, and incorporates environmental considerations like waste reduction, reuse and recycling in its purchasing guidelines. The SEV also describes the Ministry's participation in specific government-wide and interministerial environmental initiatives, like promoting 3Rs and energy and water conservation.

MBS states it will monitor the way it applies its SEV and will cooperate with my review of SEV compliance.

The SEV commits to staff training about the *Environmental Bill of Rights* and to leading training in other ministries. It notes that MBS's real estate activities have the greatest potential impact on the natural environment, and describes how it will apply the *Environmental Bill of Rights* and the *Environmental Assessment Act* to those cases.

Still, this SEV misses the mark in other important areas. Notably, it does not address the need for measurable goals for environmental programs and policies, to monitor or report on progress in meeting those goals, or to monitor relevant environmental parameters.

What The Public Said:

"Key issues for the ministry include defining best practices, environmental impact assessment and performance reviews. The initiatives listed are good examples of the current level of commitment within Management Board." Individual; August 15, 1994

"Many ministries make reference to promoting a Green Workplace and to undertaking an environmental education program for employees. This should be made to apply to all ministries." Professional Engineers of Ontario; August 9, 1994

MINISTRY OF MUNICIPAL AFFAIRS

This SEV emphasizes the Ministry of Municipal Affairs' (MMA) mandate to define the roles, responsibilities and authority of municipalities, including their environmental responsibilities. It states that the Ministry works closely with other ministries to integrate its activities and decisions with provincial environmental interests. It is committed to developing systems to ensure it considers its SEV during environmentally significant decision making, including staff training programs.

The SEV acknowledges the need "to protect prime agricultural land for long-term agricultural use," a statement regrettably absent in the SEV of the Ministry of Agriculture, Food and Rural Affairs.

However, this SEV does not refer to the Comprehensive Set of Policy Statements (the Provincial Policy Statement after January 1996) issued under the *Planning Act* Statements that describes the environmental objectives sought by that Act. This Ministry plays a unique role in land use planning and can prevent negative environmental impact. Unfortunately, its SEV neither states nor implies support for a preventative approach to land use planning policy.

Although the SEV briefly lists initiatives to which it applies, that list is too vague to effectively guide Ministry staff. Nor does the SEV acknowledge the need for clear objectives and timelines, for environmental parameters, for measurable goals for environmental programs and policies, or for the need to monitor or report on progress towards those goals.

What The Public Said:

"MMA has the greatest control of the land use practices throughout the province. They should recognize that the mosaic of ecosystems on the landscape must be a fundamental background criteria for land use planning decisions. They should also recognize that in allocating land use some land must be set aside to allow ecological processes to be retained." Canadian Land Reclamation Association; August 18, 1994

MINISTRY OF NATURAL RESOURCES

This SEV offers a long list of philosophical principles for managing natural resources. The Ministry of Natural Resources (MNR) proactively seeks partnerships with other agencies and groups involved in resource planning and development. It also states that to assess or set policy and program direction, it is important to identify information requirements. Therefore, the Ministry commits to leadership in establishing information standards and providing data about Ontario's land mass and natural resources, and in reporting on the status of resources.

While the SEV acknowledges the need for environmental monitoring and reporting, those intentions are diminished when it then fails to describe how the Ministry will set or meet priorities. The SEV affords only two sentences to the Ministry's substantial resource management responsibilities.

This SEV is completely silent on desired results for managing forests, aggregate, fisheries, game animals and

wilderness areas. There is no mention of plans to identify the classes of Ministry decisions subject to the requirements of the *Environmental Bill of Rights*. And while the SEV states: "preferred results must be clearly defined and priorities need to be more explicitly determined," a commitment to clear objectives and measurable goals for environmental programs and policies remains to be seen.

Although the Ministry provides considerable staff training, its SEV makes no mention of the need to train staff on environmental issues. Nor does the SEV commit to government-wide environmental initiatives like 3Rs, the Green Workplace Program, or water and energy conservation.

What The Public Said:

"NOTO believes that government ministries must take responsibility (or hold agents of the Crown responsible) for environmental problems created through activities that have been permitted by the Crown. With this in mind, NOTO would like to see this value statement [relating to degraded environments] re-written to clearly state that the Ministry (or its agents) will restore and rehabilitate degraded ecosystems." Northern Ontario Tourist Outfitters Association; July 29, 1994

"I also suggest that the Ministry encourage and support voluntary citizen initiatives in environmental monitoring and protection. The more basic need is to involve the public by providing timely and credible information regarding the need for conservation and environmental protection, and status reports on renewable resources." Individual; August 13, 1994

MINISTRY OF NORTHERN DEVELOPMENT AND MINES

This SEV commits the Ministry of Northern Development and Mines (MNDM) to reviewing proposals for advanced exploration and mining development before closure plans are approved. It also promises to "promote the fundamental importance of applied environmental research, the development of new rehabilitation technology" as well as environmentally sustainable development activity, and to recognize that "prevention is more effective than remediation and rehabilitation of an environmental problem."

Remarkably, this SEV focuses almost exclusively on the mining aspects of the Ministry's mandate, even though that mandate also includes northern development.

The SEV does not show how the Ministry will integrate environmental considerations into its decision-making processes and is non-committal about public consultation. It does not mention any Ministry involvement in government-wide or inter-ministerial environmental programs. And while the SEV supports preventing environmental disturbances during mining, as well as new mining rehabilitation technology, it is again unclear how the Ministry will turn support into action. Finally, like so many others, this SEV does not address the need for training staff on environmental issues.

What The Public Said:

"Where is the reference to the Northern Development component of the Ministry's mandate? Nowhere in the entire SEV is there any mention of it!" Ontario Mining Association; August 12, 1994

"In summary I see the SEV as unwanted and unneeded. If it must stay then it must become significantly more specific."
Member - Mining Act Advisory Committee

MINISTRY OF TRANSPORTATION

The Ministry of Transportation (MTO) states its commitment to encouraging public awareness and to ensuring that transportation decisions involve the community and benefit from comprehensive environmental information and expertise. MTO will participate in government environmental performance reviews and pursue an environmentally skilled and informed workforce. The SEV describes the Ministry's environmental research and development priorities, which include environmentally compatible transportation technologies research, and its environmentally sensitive design, construction and maintenance techniques.

Despite these respectable commitments, this SEV is missing details about how the Ministry will minimize the environmental impact of transportation planning, construction and maintenance activities. In fact, it does not commit to clear objectives or measurable goals for any environmental programs or policies.

The Ministry says it: "will seek to protect natural habitats," qualified by: "whenever possible and practical." The SEV is vague about the kind of actions that would lead to improved environmental responsibility in the transportation sector (promoting mass transit or introducing mandatory vehicle emission testing programs, for example). Nor does it address the need to monitor and report on relevant environmental parameters like Ontario's vehicle fleet emissions or the use of road salt.

What The Public Said:

"Detailed environmental analysis should reflect the various impacts by mode/option of noxious emission, water contamination, road congestion, land-use/incursion, etc." Transport 2000 Ontario; August 5, 1994

"To have this kind of program in place shows a responsibility that we in Ontario must applaud. The influence and the potential impact on the environment that all of the ministries listed can and do have in the province is significant." Ready Mixed Concrete Association of Ontario; August 8, 1994

"...to be truly accountable to the people of Ontario, the Ministry should establish clear goals and measurable targets with respect to environmental protection." Pollution Probe; August 10, 1994

MINISTRY OF FINANCE

Originally prescribed by the *Environmental Bill of Rights*, the Ministry of Finance (MOF) was removed from its requirements by Regulation 482/95 on November 29, 1995. As a result, this Ministry no longer has to consider its Statement of Environmental Values. However, the following review was prepared since this Ministry was subject to the *Environmental Bill of Rights* for most of the reporting period. The exemption of the Ministry of Finance from the requirements of the *Environmental Bill of Rights* was the subject of a Special Report that I submitted to the Legislative Assembly on January 17, 1996. My report expressed my concern that this exemption will impede Ontario's progress toward a healthful, sustainable environment.

In its SEV, the Ministry committed itself to broad pre-Budget consultation, including discussions about sustainable development. It recognized the need to consider how its physical operations affect the environment, along with the benefits of waste reduction and natural resource conservation in its daily operations.

Still, the Ministry made little attempt to show how it would incorporate environmental considerations into its decision-making systems. The SEV did not commit to working with other ministries and agencies on environmental initiatives, to setting clear objectives and measurable goals for environmental programs and policies, or to monitoring and reporting on progress toward those goals.

Again, this SEV did not acknowledge the need for staff training, or for information or research about relevant environmental issues.

What The Public Said:

"We commend the Ministry of Finance for its recognition of 'the need to consider the impacts of its physical operations on the environment.' We recommend that each ministry establish a guiding principle that ensures that its practices fall under the objectives of the EBR." Ontario Forest Industries Association; August 15, 1994

"Could the ministry encourage both government ministries and private institutions to report on their environmental operations to the Ministry of Finance? Will tax incentives or subsidies be considered to encourage green business? Will the ministry advocate the use of full-cost accounting principles both internally and among its clients?" Ontario Round Table on Environment and Economy Secretariat; July 4, 1994

"Ultimately, the value of having SEVs will depend on the extent to which ministries take them seriously and incorporate them into their decision-making processes. Given its role as a central agency within the provincial government, the Ministry of Finance could have an important impact on the effective implementation of SEVs throughout the government This could involve identifying some objectives that will be met and that might provide a way of monitoring progress toward implementing sustainability measures."

Dr. David Bell, Dean, Faculty of Environmental Studies, York University; June 30, 1994

RECOMMENDATIONS:

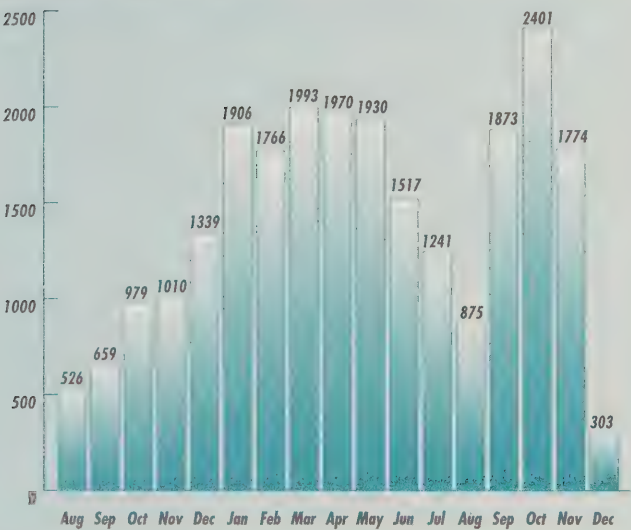
1. All ministries recognize the educational potential of the SEVs and use them to generate understanding among ministry staff and the public about the relationship between the ministries' mandates and their environmental values.
2. All ministries define environmental protection and sustainability goals and objectives for their daily operations either in the SEVs or in a separate but complementary public document.
3. All ministries explore ways to strengthen monitoring and reporting of key environmental parameters relevant to their mandates.

PART 4: THE ENVIRONMENTAL REGISTRY

The Environmental Registry is a computer system that gives the public access to environmentally significant proposals and decisions, appeals of instruments, court actions and other information related to the government's environmental decision making.

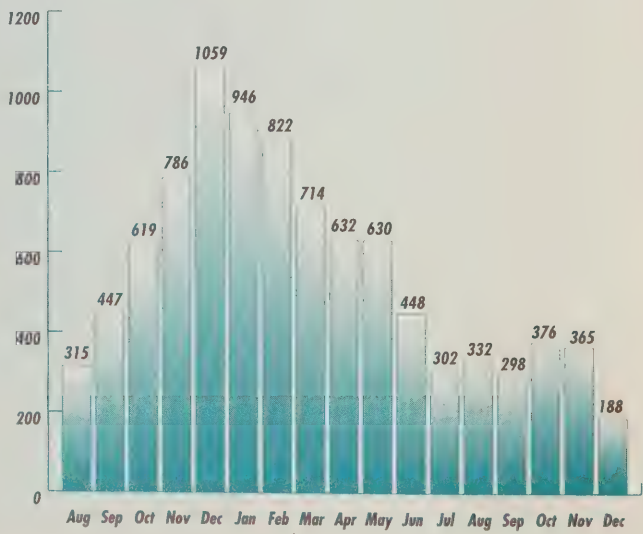
The *Environmental Bill of Rights* requires prescribed ministries to post environmentally significant proposals on the Registry so that the public can provide input into decision making before decisions are made. (For a complete list of proposals posted on the Registry during the reporting period, contact my office.) During this reporting period, almost 10,000 Ontarians logged on to the Registry, and that number continues to grow.

The Environmental Registry is a cost-effective and efficient way to open the door to the government's environmental decision-making process. By all accounts, it is a remarkable accomplishment. The challenge in coming years will be to solve technical problems and to provide broader public awareness.



Environmental Registry
Total Log-ons
August 1, 1994 - December 31, 1995

Environmental Registry
New User IDs
August 1, 1994 - December 31, 1995



MAKING THE REGISTRY MORE EFFECTIVE

To boost public access to the Registry, the Ministry of Environment and Energy teamed up with the Ministry of Culture, Tourism and Recreation to provide Registry access at more than 300 public and First Nations libraries. My office developed support materials, including an *Environmental Bill of Rights* citizen's guide, information brochures and fact sheets. We also offered access to the Registry in our public Resource Centre.

All the same, there were some problems. For example, there was a concern about how the Registry is administered. Currently, various government bodies share administrative responsibility for the system. However, the *Environmental Bill of Rights* allows the Ontario government to establish a single authority to operate the Registry. In my view, this would improve operational accountability, consistency and efficiency.

Usually, new technology is a positive step forward, but start-up problems are not uncommon. The Registry was no exception and a number of glitches, including search function and data entry difficulties, arose during implementation. At the same time, some users were surprised to find that the Registry is not interactive and that they could not comment online.

We also received complaints about spelling and French translation errors, technical jargon and wrong information that was contained in Registry notices. This is unfortunate since diminished or poorly presented information can mask environmental significance. For example, a multimillion-dollar expansion proposal was described on the Registry as the addition of four heaters to an existing refinery.

If the Registry is to be of value to the public, posted information must be relevant and well organized, with clear explanations of technical material. In response to inquiries by my staff and public comments made directly to the MOEE, the Ministry asked its district offices to include all necessary information on the Registry and, where possible, an email address.

Additional information must also be available to allow members of the public to understand Registry postings. Indeed, the *Environmental Bill of Rights* states Registry notice shall include "a statement of where and when members of the public may review written information about the proposal."

Just the same, I received complaints from members of the public that such information was hard to get at some government offices. These concerns were repeated at a multistakeholder round table I hosted to discuss barriers to participating in the *Environmental Bill of Rights* in September 1995.

To review these concerns, my staff made nine visits to six Ministry of Environment and Energy offices — the only ministry required to post proposals for environmentally significant policies, Acts, regulations and instruments in 1995. They did not identify themselves as employees of the Environmental Commissioner of Ontario. Their goal was to evaluate:

- If Ministry staff were prepared to deal with public inquiries
- If proposal information was reasonably accessible to the public
- If Ministry staff could answer questions about the proposal

Despite minor variations in how offices dealt with public inquiries, Ministry staff were generally prepared to receive inquiries, gave reasonable access to the information and could usually answer questions about the proposal. For example:

- Ministry staff tended to know where to find the information and that the public had a right to see it

- The Ministry employee responsible for dealing with the proposal was usually available for discussion, and if not, other staff usually did their best to help
- The Ministry did not impose time limits on reviewing the information and allowed viewers of the information to make notes and photocopies at little or no charge

While most offices required no advance appointment, two did. Still, no one was denied access to information just because they did not have a prior appointment. I recommend members of the public contact ministry offices before visiting just to be sure that the most knowledgeable person on a specific Registry file is available.

Unfortunately, one office deviated so greatly from the norm, and was so unprepared and uncooperative, a different member of my staff went back and tried again. At this office:

- Ministry staff did not know information was located in their office, although they later discovered it was there
- My staff had to show identification
- Ministry staff set a 30-minute time limit for viewing information
- My staff were not allowed to make notes or photocopies of the information they sought

This office's public information access procedures starkly contrasted with all others. Complacency about the public's right to participate in accordance with the provisions of the *Environmental Bill of Rights* is unacceptable and I expect ministries to ensure proper training for staff.

Some members of the business community felt the Registry would delay the approvals process and reveal proprietary information to competitors. However, the MOEE approval process currently averages about 45 days and runs concurrently with the 30-day Registry posting period. And, when people have the opportunity to comment early in the decision-making process, costly delays are often avoided.

In addition, businesses do not have to release proprietary information on the Registry. In fact, they can and do ask the Ministry of Environment and Energy to screen such information from Registry postings. Posting requirements are applied equally to all Ontario businesses, promising consistency and fairness in the application of environmental regulation. Indeed, the Registry provides a unique window on industry developments and innovative businesses are already using it to identify new markets and competitive developments.

The Environmental Registry opens the doors to environmental information and to transparent decision making in Ontario. Over the next few years, my office and the MOEE's *Environmental Bill of Rights* Office will continue to work together to enhance the current Registry system and increase awareness about this unique public participation tool.



RECOMMENDATIONS

1. The Ministry of Environment and Energy designate a single authority to operate (including both administrative and technical operations) the Environmental Registry, and:
 - a. resolve the Environmental Registry's technical problems by upgrading the entire system or by upgrading the current software
 - b. upgrade the Environmental Registry platform so the public can access and use its information as a database
2. All ministries develop and publish standard procedures for releasing the full text of proposals to the public. Ministry staff make every effort to accommodate those who live far from district and regional offices.
3. All ministries continue to improve the quality and value of the information posted on the Registry by:
 - clearly and accurately summarizing proposals, giving enough information, identifying additional public consultation opportunities, and explaining how comments affected the decision
 - ensuring all Registry postings are well organized, clearly written, proofread and that technical information is explained
 - ensuring all entries include ministry contact telephone and fax numbers
4. All ministries post on the Environmental Registry annual summaries of all environmentally significant activities, including the number of policies, Acts, regulations and instruments posted, and the disposition of Applications for Review and Investigation.

To review environmentally significant decision making, I followed the steps of the decision making process itself. For each step, I examined ministry processes and how they were applied. I then reviewed some decisions that were posted on the Environmental Registry, and others that were not posted, but which I considered environmentally significant.

I may seem to single out the Ministry of Environment and Energy. But while all ministries have had to consider their SEVs since November 15, 1994, MOEE is the only ministry that was required to post all its proposals for environmentally significant policies, Acts, regulations and instruments on the Registry during this reporting period. Because other ministries were subject to a much lesser extent, I reviewed them largely based on the processes they developed but, for the most part, have yet to apply (see Tables).

Each ministry provided me with a report on EBR implementation. I made extensive use of these reports to gain insight into ministry processes for the purpose of my review.

Proposals And Decisions Ministry of Environment and Energy

Acts from 8/15/94	Acts from 8/15/94	Policies from 8/15/94	Policies from 8/15/94	Regulations from 11/15/94	Regulations from 11/15/94	Instruments from 11/15/94	Instruments from 11/15/94
Proposals	Decisions	Proposals	Decisions	Proposals	Decisions	Proposals	Decisions
0	0	33 (includes one exception)	19	31 (includes 6 exceptions)	4	2393	1591

Proposals And Decisions Other Ministries

Ministry	Acts from 4/1/95	Acts from 4/1/95	Policies from 4/1/95	Policies from 4/1/95
	Proposals	Decisions	Proposals	Decisions
Agriculture, Food and Rural Affairs	0	0	0	0
Consumer and Commercial Relations	0	0	1	1
Culture, Tourism and Recreation	0	0	0	0
Economic Development and Trade	0	0	0	0
Finance	0	0	0	0
Health	0	0	0	0
Housing	0	0	0	0
Labour	0	0	0	0
Management Board of Cabinet	0	0	0	0
Municipal Affairs	1	0	0	0
Natural Resources	0	0	9	3
Northern Development and Mines	0	0	1	1
Transportation	0	0	1	0

REVIEWING DECISION MAKING STEPS

STEP 1 — DECIDING WHETHER A PROPOSED DECISION IS ENVIRONMENTALLY SIGNIFICANT

The requirements of the EBR apply to environmentally significant decisions made by the ministries. Each ministry reported to me on how it determines whether a proposed decision is environmentally significant and how many of those decisions it made during the reporting period. Six said they made no environmentally significant decisions during the reporting period. These ministries were OMAFRA, MBS, MCTR, MEDT, MOH and MOL.

MCCR, MMA and MTO reported making only one environmentally significant decision each. The Ministry of Housing reported two environmentally significant decisions.

MNR reported 31 environmentally significant decisions, while MOEE reported making more than 2,000 environmentally significant decisions.

I commend the ministries for working together through the Interministerial Committee to develop common “Guidelines for Assessing the Environmental Significance of a Policy, Act, Regulation or Instrument.” Most ministries indicated that their staff use these guidelines. I encourage the ministries to go one more step and tailor the guidelines to each ministry’s mandate. So far, MTO, MBS and MOEE have moved in this direction.

Seven ministries (OMAFRA, MMA, MNR, MHous, MTO, MCTR and MBS) document their decisions on environmental significance. MCCR and MOH keep partial records. Based on their reports to me, MOL, MNDM, MOEE and MEDT keep none. A trackable and reproducible process for determining environmental significance will strengthen the accountability of decision making and enable ministry staff to understand how each decision is made.

As well, ministries could clarify their process for determining environmental significance by identifying specific programs where environmentally significant decisions are made.

STEP 2 — CONSIDERATION OF THE SEV

Once a ministry identifies a proposal for an environmentally significant decision, it must consider its Statement of Environmental Values. This is challenging for ministries since they failed to include in their SEVs the kinds of benchmarks and criteria that are critical to this type of assessment. Without such measures, objective analysis is extremely difficult, and, many would say, impossible.

Despite this weakness, most ministries said they have processes in place to ensure their SEV is considered during environmentally significant decision making. These processes vary from ministry to ministry.

As noted, many ministries reported they made no environmentally significant decisions during the reporting period, and therefore did not use their SEV consideration processes. Still, ministries should develop such processes to ensure the SEVs are properly applied once environmentally significant decisions are identified in the future.

To ensure fairness and public accountability, ministries must be able to track government decision making. Nine ministries (OMAFRA, MBS, MTO, MNDM, MCCR, MMA, MNR, MOEE and MOH) reported their decision

tracking systems will include how their SEV is considered. Four ministries (MOL, MCTR, MHous and MEDT) did not report an intention to include SEV consideration in their decision tracking.

I urge all ministries to integrate SEV consideration into their existing decision tracking systems. Since the *Environmental Bill of Rights* requires ministries to weigh environmental issues in decision making, consideration of the SEV must be clear to me and to the public.

MOEE jeopardized decision-making transparency when it chose not to consider its SEV in deciding to issue instruments. The Ministry offered two explanations.

In an August 1995 discussion paper on the use of its SEV, MOEE stated: “issuing, review, repeal or amendment of instruments is guided by policies, Acts, or regulations.” It maintained that since the SEV is considered in the development of these policies, Acts and regulations, considering it again for the granting of instruments is not necessary.

In its 1996 annual report to me, the Ministry states that SEV consideration is not required for instrument proposals because MOEE already considered the SEV when it developed its classification regulation for instruments.

Both explanations are at odds with the intent of the *Environmental Bill of Rights* and do not justify the exclusion of environmentally significant instruments from the requirement of SEV consideration. The *Environmental Bill of Rights* provides no exemptions from the SEV consideration requirement for environmentally significant decisions.

By excluding proposals for instruments from SEV consideration, MOEE effectively removed more than 95 per cent of its environmentally significant decisions from that requirement. This is a troubling departure from the intent of the *Environmental Bill of Rights*. MOEE should explicitly subject all its environmentally significant instrument decisions to SEV consideration and ensure that the related documentation is part of the Ministry file.

STEP 3 — PUBLIC PARTICIPATION THROUGH THE ENVIRONMENTAL REGISTRY

Registry Posting Periods — The *Environmental Bill of Rights* requires posting of environmentally significant proposals on the Environmental Registry for a minimum of 30 days for public comment. When posting proposals for policies, Acts or regulations, the minister must also consider extending that posting period based on factors listed in the *Environmental Bill of Rights* and detailed in a discussion paper produced by my office.

Environmental Registry Notice and Comment Procedures:

An Environmental Commissioner of Ontario Discussion Paper

This discussion paper (provided in draft to the ministries in October 1995) suggests that members of the public need adequate time and information to participate in decision making on policies, Acts and regulations (the paper does not apply to instruments) and ministries should do their best to provide these. It recommends that information about proposals be relevant, understandable, well organized and clearly written, technical information be explained and background materials be available for comment.

The paper also proposes a framework to assess when a proposal should go on the Registry. It discusses which circumstances require additional consultation. The framework is based on the EBR requirements that the complexity and level of public interest in a decision should guide ministries in determining the required level of public participation. The paper provides a recommended approach to ministry staff for determining the length of notice and comment periods, and how to use the Registry to get feedback from stakeholders, depending on the level of complexity and public interest.

During the reporting period, 12 per cent of policy proposals and eight per cent of regulation proposals were posted for more than the minimum 30 days. For complex proposals for new, or amendments to existing, policies and regulations, 30 days is usually too short for meaningful public input, particularly if the Registry is the primary method of public consultation. The ministries should allow more than the 30-day minimum time for complex proposals to facilitate informed public comment.

Posting Exceptions — A minister can exempt a proposal from the public notice and comment provisions of the *Environmental Bill of Rights* if public participation equivalent to that required by the Act has occurred. Ministers can also exempt proposals in emergencies or when the delay caused by giving notice on the Registry would endanger people, the environment or property. Either way, the minister must post an exception notice on the Registry and give notice to my office. These exceptions only apply to posting on the Registry; ministries are still required to consider their SEVs for these proposals.

Half of all emergency exception notices posted during the reporting period involved interim expansions or “emergency” Certificates of Approval for landfill sites. Granted, lack of landfill space is an urgent issue for Ontario municipalities and MOEE staff, but as one commenter noted: “lack of landfill capacity rarely occurs overnight.” The Ministry of Environment and Energy should develop criteria for determining emergency exemptions for landfill sites and make those criteria public through the Environmental Registry.

Transition Issues — The Ministry of Environment and Energy made remarkable efforts to ensure the smooth transition to the new *Environmental Bill of Rights* requirements. However, difficulties are inevitable during the change to a new regime.

As of November 15, 1994, the Minister of Environment and Energy had to provide public notice on the Environmental Registry of proposed environmentally significant instruments. On November 18, 1994, the Ontario government passed Regulation 719/94, exempting any application for proposed instruments received

by the Ministry earlier than November 15, 1994 from the Registry posting requirements. This was meant to reduce the number of instruments that MOEE would have to post during the start-up period.

What it also meant was the exemption of 282 approvals applications, including permits, or amendments to permits, for 187 waste disposal sites and other environmentally significant facilities. Notice of this exemption regulation was not posted on the Registry.

Trying to undo some of the damage, MOEE passed a second regulation in March 1995. Regulation 108/95 reinstated the Registry posting requirement for those proposed instruments that were exempted previously. Again, no notice of the regulation was provided on the Registry.

Bud Wildman, MOEE Minister at that time, acknowledged that both regulations significantly affected the environment, that both should have been posted on the Registry, and that efforts would be made to avoid such errors in the future.

SELECTED DECISION REVIEWS

The *Environmental Bill of Rights* requires ministers to consider all relevant comments received during the consultation process. Registry notice of the ministry's final decision must include a brief description of the effect of these comments. I focused my examination of individual decisions on the transparency of the public participation process and the impact of public consultation on the final decision.

Policies, Acts, Regulations and Instruments — Only the Ministry of Municipal Affairs posted a proposal for an environmentally significant Act but no decision was made during the reporting period.

Across all ministries, 43 policies and 25 regulations were posted, along with two policies and six regulations that were posted as exceptions to the public comment provisions. The majority of these policy proposals and all of the regulation proposals were posted by MOEE.

The government's new policy on municipal waste incineration received substantial public comment (see Box). The "incineration package" which was posted on the Registry comprised two regulations and one policy. My review of how public comments influenced this decision shows MOEE took every reasonable step to consider all comments received when making its decision.

MOEE addressed the concerns of both proponents and opponents of the proposal. The decision notices posted on the Environmental Registry offered a comprehensive summary of the comments received, an explanation of how those comments were considered, what impact they had on the decision, and MOEE's rationale for rejecting comments. And even though the comments did not change the government's overall direction on municipal incineration, they did make a difference to the particulars of the decision.

I also considered the incineration issue itself. Today, the main alternative to municipal waste incineration continues to be landfill disposal, and both options are potentially harmful to the environment. As long as waste-management planning continues to require a public examination of alternatives, and to focus on minimizing environmental impacts, then this decision is not necessarily a licence to burn. Municipalities now have another waste-disposal option, but they still have to show that the choices they make are environmentally sound.

Municipal Waste Incineration Policy And Regulations

Proposal and Background

The Ministry of Environment and Energy posted a package of three proposals concerning the removal of the existing ban on new municipal waste incinerators on the Registry in July 1995. The proposals were a regulation to remove the ban on new municipal waste incinerators, a regulation exempting municipalities that conducted waste-management planning processes while it was illegal to establish new municipal waste incinerator sites in Ontario and, therefore, did not consider incineration as a waste-management alternative, and a policy setting out combustion and air pollution control requirements for new municipal waste incinerators.

Anti-Incineration Views

Incinerators emit toxic heavy metals and organic contaminants that may endanger human health, as well as waste gases that contribute to acid rain, smog and global warming. Solid-waste incinerators create large quantities of contaminated incinerator ash and other solid waste residues that must be disposed of as hazardous wastes. Incineration is less cost-effective than, and competes with, recycling for raw materials. It is more expensive than other waste-disposal options.

Pro-Incineration Views

While there has been intense scrutiny of air emissions from incinerators in Canada, there is no comparable study of air emissions from landfill sites. Some American studies suggest incinerator emissions compare favourably with landfill emissions. Incineration and recycling programs do not compete for the same raw materials so the use of these options in combination is very effective.

Public Comments

The proposed policy and regulations were posted on the Environmental Registry for 45 days. MOEE received 75 comments. Some members of the public expressed concern to the Environmental Commissioner that it was difficult to respond to this complex proposal within these timelines. The Ministry responded to the comments in its decision notices on the Environmental Registry, maintaining that the environment and human health in Ontario would be protected, as the proposed limits are stricter than those needed to just protect human health and the environment; the alternative of zero discharge fails to take into account the impact of emissions from alternatives to incineration; and the ministry continues to support 3Rs activities. The policy was revised to respond to concerns about management of incinerator ash and the need for environmental monitoring.

Decision

The decisions to finalize the two regulations and the policy were posted on the Environmental Registry on January 2, 1996. The policy was revised substantially as a result of comments received. No changes were made to one regulation and only a few minor changes were made to clarify the other regulation.

Conclusions

The decision to remove the ban on municipal waste incinerators was made as an election promise and public comment on the proposals had little impact on the government's policy decision.

Public comment significantly affected the details of the policy, which was revised to raise emission limits for some parameters, to include specifications for the management of incinerator ash, to include monitoring protocols, to exclude wood waste and sewage sludge incinerators from the guidelines, to provide special allowances for cement and lime kilns, and to require plain language reports to the Ministry and the public.

The MNR's two provincial park management plan amendment proposals also spurred considerable public interest — approximately 300 comments were received.

Rondeau And Pinery Provincial Park Plan Amendments

Proposal And Background

The Ministry of Natural Resources proposed amendments to the Rondeau and Pinery Provincial Parks management plans to allow park managers to develop partnerships for managing white-tail deer herd reductions.

Rondeau's Carolinian forest ecosystem is considered provincially threatened and Pinery's Oak Savanna ecosystem is considered globally threatened. Extensive browsing by white-tail deer is threatening vegetation and other animals that depend on that vegetation. The effects have extended beyond the boundaries of Pinery Provincial Park in the form of crop damage, car/deer accidents on the nearby highway and extensive browsing in area subdivisions.

These policy proposals were posted on the Environmental Registry for 45 days beginning July 28, 1995. The proposal for Rondeau Park generated 125 comments. The proposal for Pinery Park generated 163 comments.

Public Comments

Most of the comments supported the proposals. Many supported the amendment but differed on how to cull the deer. The amendments, however, do not specify how the herd reduction will be carried out. It remains to be seen how the Ministry will take public comment into account in implementing the decision to reduce the herd.

Decision

The Ministry stated that the original amendments were approved because of the general support received. The amendments state that herd reductions will be undertaken when required to protect and preserve the biodiversity of the ecosystems, and that partnerships may be used to complete the herd reduction.

Conclusions

In this case, the public consultation process, which included the public notice posted on the Registry, affirmed substantial public support for the proposals and did not result in changes to the proposed amendments. However, that so many people commented suggests that there is a great deal of public interest in how Ontario's parks are managed.

I N S T R U M E N T S

MOEE posted more than 2,300 instrument proposals during the reporting period; people commented on 29. In some cases, like the Petro-Canada decision discussed below, more than 500 people commented on two instrument proposals. The number of public comments is low overall partly because the *Environmental Bill of Rights* is new legislation and Ontarians are still learning about their right to participate through the Environmental Registry.

It would be hasty to measure the public value of posting information on the Registry strictly by the quantity of public comments. For example, many instrument proposals dealt with burning used motor oil in garage space heaters, but comments were rare. Still, oil recycling companies and citizens' groups noted the large number of such instruments granted, asked questions about airborne pollutants from burning used oil, and talked to government about whether used oils should be recycled and re-refined, as opposed to being burned in heaters. For the first time, Ontario residents could see the total number of such proposals and could offer alternatives to the current pattern for managing these used materials.

There have been suggestions for removing certain types of instruments like proposed expansions of landfill sites from Registry posting requirements. My review has shown that instruments relating to waste-disposal sites have attracted more public comment through the Registry than many other types of instruments. De-classifying such instruments, which are often of local public interest, would be contrary to the intent of the *Environmental Bill of Rights*.

My reviews of a number of instrument decisions show that the Registry posting did not often alter the final decision. However, judging by the comments received, it is clear that public comments did affect the terms and conditions of the permits issued by MOEE. Moreover, the structured opportunity for participation enhanced public awareness about the complex trade-offs that decision makers face.

Petro-Canada Products

Proposal and Background

Petro-Canada Products sought air emissions and sewage works approvals to expand its Mississauga operation, which is close to several residential areas. The Ministry of Environment and Energy stated on the Registry that the proposed expansion involved the installation of four new heaters and a change of service for one existing heater, as well as connection to existing storm and process water sewers, as part of a new lubricants production process.

Public Comments

The proposal for the air emissions approval was posted on the Environmental Registry on May 18, 1995 and the proposal for the sewage works approval was posted on May 19, 1995. The public had 30 days to respond. These proposals generated more than 1,000 public comments; 531 were received during the 30-day comment period. Most opposed the approvals and requested an Environmental Assessment. Most of the letters received after the Registry comment period supported the facility.

The most frequent concerns were present and future odours, air and water pollution, increased truck, rail and boat traffic, noise levels, high risks of fire and explosion, proximity to wetlands and wildlife, and risks to human health.

The public comment prompted MOEE to add conditions to the Certificate of Approval for air emissions. These included the establishment of a formal Public Liaison Committee including members of the community, monitoring and reporting requirements for leak detection, ambient air monitoring, noise, odour and sulphur dioxide, and a requirement to provide copies of emission inventories, odour assessments, noise studies and quarterly and annual reports to the Public Liaison Committee.

Decision

MOEE granted Certificates of Approval for both air emissions and sewage works. The air approval did contain the conditions described above. Notice of these decisions was placed on the Registry on October 3, 1995. This decision was the subject of a third-party leave to appeal application, which was pending at the end of this reporting period.

Conclusions

Public opposition to the proposals prompted MOEE to impose new conditions, including the formation of the standing Public Liaison Committee, which is to have regular access to reports on the environmental impact of the operation.

In deciding to approve expansion of the existing Petro-Canada plant, MOEE had to weigh the validity and relative importance of two priorities — the economic activity of the plant and the community's desire for greater environmental protection, and was challenged to find solutions that satisfied both.

Uniroyal Chemical Ltd.

Proposal and Background

Uniroyal, a producer of organic chemicals, proposed an amendment to its Certificate of Approval for sewage works. Waste disposal on the site has contaminated some soil and groundwater. In 1989, a municipal well in nearby Elmira and several private wells in the area were found to be contaminated with nitrosodimethylamine (NDMA), considered a potential human carcinogen by MOEE. In addition, wastewater discharges from Uniroyal to the Elmira sewage treatment plant were elevating levels of NDMA in effluent from the sewage treatment plant.

In November 1991, MOEE issued a Control Order requiring Uniroyal to contain and treat on-site groundwater. The amendment sought approval for sewage works to hydraulically contain the southwest part of the site and treat the contaminated groundwater from the top beds of the upper aquifer. Once treated, the water would be discharged into a creek that runs through the property.

Public Comments

MOEE received 10 comments on the proposal before it was posted on the Environmental Registry as part of regular public consultation. Notice was posted on the Registry for 30 days. During this period, two comments were submitted.

The Ministry said it used the comments submitted during the consultation period to refine the terms and conditions of the proposal. Although some of the proposed amendments were incorporated into the approved Certificate, others were not. Specifically, MOEE did not incorporate a submission that the Certificate of Approval should provide for the full containment of the entire Uniroyal site.

Decision

The amended Certificate of Approval was approved on August 2, 1995, and notice of the decision was posted on the Environmental Registry that day. Local citizens' group; Assuring Protection for Tomorrow's Environment; applied to the Environmental Appeal Board for leave to appeal the decision. That application was denied on September 29, 1995.

SUMMARY OF RECOMMENDATIONS

STATEMENTS OF ENVIRONMENTAL VALUES

1. All ministries recognize the educational potential of the SEVs and use them to generate understanding among ministry staff and the public about the relationship between the ministries' mandates and their environmental values.
2. All ministries define environmental protection and sustainability goals and objectives for their daily operations either in the SEVs or in a separate but complementary public document.
3. All ministries explore ways to strengthen monitoring and reporting of key environmental parameters relevant to their mandates.

THE ENVIRONMENTAL REGISTRY

1. The Ministry of Environment and Energy designate a single authority to operate (including both administrative and technical operations) the Environmental Registry, and:
 - a. resolve the Environmental Registry's technical problems by upgrading the entire system or by upgrading the current software
 - b. upgrade the Environmental Registry platform so the public can access and use its information as a database.
2. All ministries develop and publish standard procedures for releasing the full text of proposals to the public. Ministry staff should make every effort to accommodate those who live far from district and regional offices.
3. All ministries continue to improve the quality and value of the information posted on the Registry by:
 - clearly and accurately summarizing proposals, giving enough information, identifying additional public consultation opportunities, and explaining how comments affected the decision
 - ensuring all Registry postings are well organized, clearly written, proofread and that technical information is explained
 - ensuring all entries include ministry contact telephone and fax numbers.
4. All ministries post on the Environmental Registry annual summaries of all environmentally significant activities, including the number of policies, Acts, regulations and instruments posted and the disposition of Applications for Review and Investigation.

SUMMARY OF RECOMMENDATIONS

MINISTRY ENVIRONMENTAL DECISION MAKING

1. All ministries tailor the environmental significance guidelines to their own particular operations, provide adequate staff training on the application of the guidelines, and ensure determination of environmental significance is trackable and reproducible.
2. All ministries integrate SEV consideration into existing decision-making tracking methods, explicitly apply SEV consideration to all environmentally significant decisions (including decisions on instruments), and ensure related documentation is part of the ministry file.
3. All ministries extend the 30-day minimum Registry posting time for complex, new or amended proposals for policies, Acts and regulations to enable informed public comment.
4. The Ministry of Environment and Energy develop criteria for determining emergency exceptions for landfill sites and make those criteria public through the Environmental Registry.

REVIEWS AND INVESTIGATIONS

1. The Ministry of Environment and Energy assess the occurrence of trichlorethylene in Ontario's drinking water supplies using existing data from its Drinking Water Surveillance Program. MOEE should then decide if further action is required, such as more intensive sampling of water supplies which appear to be at risk. Depending on the magnitude of the risk, MOEE should consider a more stringent guideline on an interim basis until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.
2. The Ministry of Environment and Energy assess the needs of the approximately 40 surface water treatment plants in Ontario which are potentially vulnerable to cryptosporidium. For plants which are most vulnerable, planning for the installation of filtration should proceed, unless it can be demonstrated to be unnecessary. The Ministry of Environment and Energy and the Ministry of Health should also consider installing cryptosporidium detection methods at the most vulnerable plants to provide early warning of a breakout.
3. The Ministry of Environment and Energy verify the status of reviews by the Federal-Provincial-Territorial Subcommittee on Drinking Water and other scientific panels before citing such reviews as a reason to decline Applications for Review under the *Environmental Bill of Rights*.

4. The Ministry of Environment and Energy address public concerns about air pollution from smokestacks by focusing more resources on resolving the underlying factors within its mandate, including outdated Certificates of Approval, inadequate monitoring of sources, and regulations which focus too heavily on short-term concentrations of pollutants and not enough on long-term loadings to the environment.
5. The Ministry of Environment and Energy and the Ministry of Municipal Affairs and Housing, in their role of reviewing and approving municipal land use plans, establish and apply guidelines to help prevent future land use conflicts caused by air emissions.
6. Ministries cooperate to review and upgrade Ontario's groundwater management framework. These ministries would include the Ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation. As a first step, ministries should compile current, accurate information on groundwater data, as well as statistics on inspections of potential contamination sources and enforcement of relevant legislation. This information should be made public.
7. The Ministry of Environment and Energy, working with municipalities, focus more efforts on minimizing groundwater and other environmental impacts of existing landfill operations. These efforts should include a shift in focus from merely monitoring leachate plumes in groundwater to an increased emphasis on preventing such contamination. A first step might be a review of existing provincial rules and guidelines governing landfill operations. Such a review should involve the public, and reflect the regional diversities of waste disposal in Ontario.
8. The Ministry of Environment and Energy announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently under way are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of Environment and Energy should begin to enforce the refillable soft drink container regulations under the *EPA*.
9. Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *EBR* and cite any additional relevant factors in their decision such as limited resources required to carry out a review. Whenever possible, valid concerns of the Applicants should be addressed.
10. Ministries follow the lead of the Ministry of Environment and Energy whose procedures for the receipt and handling of Applications for Review and Investigation are exemplary.

SUMMARY OF RECOMMENDATIONS

INSTRUMENT CLASSIFICATION

1. Ministries complete their instrument classification process and consult with the public on classification proposals and amendments to classification regulations.
2. Ministries determine those high-volume instruments which are likely to produce cumulative environmental effects, and post annual statistics for these non-classified instruments on the Environmental Registry.

EDUCATION INITIATIVES

1. All ministries increase their efforts to publicize the *Environmental Bill of Rights*, and particularly the Environmental Registry, to their staff and stakeholders.

Conclusions

The comment period provided an opportunity for the public to make their concerns known to MOEE. Also, comments submitted during the comment period tended to be more detailed than earlier ones, and several of the specific wording changes suggested were incorporated into the final Certificate. The more structured opportunity to comment provided by the Registry posting encouraged interested parties to suggest specific changes to the proposed instrument. Comments submitted during the comment period enhanced the credibility of the group in its application for leave to appeal the instrument.

Inter-Recycling Systems Inc.

Proposal And Background

Inter-Recycling Systems Inc. applied for approval to amend its Certificate of Approval for its waste-disposal site to extend the service area and to clarify the maximum daily waste limit to 200 cubic yards (150 tons).

Public Comments

The proposed instrument was posted on the Registry for 60 days beginning February 21, 1995. According to MOEE, the comment period was extended to allow for a public meeting. The Registry notice states that 47 comments were received. The decision notice states that many public concerns were addressed, where appropriate, through terms and conditions. Concerns included compliance with daily limits of waste and recyclables, traffic, noise, dust, asbestos, property values, water tables, and road size and conditions. In response, MOEE amended the Certificate of Approval to include the development of a landfill operations plan in consultation with the newly established Inter-Recycling Landfill Liaison Committee, restrictions on the daily amount of waste accepted, types of recycling operations and when waste is received, conditions for depositing waste at new sites, and noise and odour limits.

Decision

The Certificate of Approval was issued on September 27, 1995. Notice was given on the Registry on October 10, 1995.

Conclusions

Negotiations between the public, MOEE and the proponent led to changes to accommodate many concerns. That MOEE extended the public notice period to 60 days indicates the Ministry considers the Registry an important way to solicit input.



The case of K & E Waste Resource Inc. is an example of an excellent public consultation process. MOEE extended the public notice period, mediated outstanding issues, and considered comments received both before and after the public notice period. The Registry decision notice was comprehensive. My review indicates that public comment had a significant effect on the final decision. I commend MOEE for its efforts to get public input on this proposal.

K & E Waste Resources Inc.

Proposal and Background

K & E Waste Resources Inc., a subsidiary of Philip Environmental, applied for approval to make changes to its waste-disposal site in the City of Sarnia. The proponent wanted to revise the final contours of the landfill site within the approved capacity of the site, and to increase the fill rate from a maximum of 100 tonnes per day to an average of 1,000 tonnes per day and a maximum of 1,500 tonnes per day. According to the Ministry of Environment and Energy, the revised final contours would increase the maximum height of the site to approximately 12 metres above grade. The increased fill rate would reduce the lifespan of the landfill site from 40 to 50 years to 5 to 7 years. The Registry notice also stated that the application included a new design and operation report and control works involving a leachate collection system and stormwater detention pond.

Public Comments

The proposal was posted on the Environmental Registry for 30 days beginning April 20, 1995. The comment period was extended to June 9, 1995, as requested by members of the public. The decision notice states that 315 comments were received. The main concerns were volume, fill rate, final height, and local effects of dust, odours and noise.

Decision

The Registry decision notice states that on June 16, 1995, the Director issued an interim decision approving the design and operation report for the landfill but restricting the rate of fill to 600 tonnes per day until October 31, 1995, and imposing an operating height limit of five feet above grade. This interim decision, which was posted on the Registry on June 26, 1995, was granted to allow the company and the public time to resolve outstanding issues. Following the interim decision, the company undertook a community survey to identify the outstanding issues and began negotiations to resolve those issues. These negotiations led to several agreements, including property value protection, no-fault nuisance compensation and future development of a golf course on the site.

On November 1, 1995, MOEE posted notice on the Registry that it had issued a final approval. That approval reflected the agreements reached and approved the fill rate of 1,000 tonnes per day average and 1,500 tonnes per day maximum, removed the five foot above-grade operating restriction, imposed a total volume limit of 3,454,000 cubic metres of fill material, imposed an end closure date of no later than September 12, 2002, required the company to financially support the community advisory committee, provided a separate tipping area for local residents, and amended other conditions to improve the clarity of the approval.

Conclusions

MOEE extended the public notice period beyond the 30 days, required mediation of outstanding issues, and considered public comments received before and after the EBR-related public notice period. The Registry decision notice described the proposal, public concerns, and the impact of those concerns on the Ministry's decision. The Certificate of Approval indicates that public comment had a significant impact on the final decision.

DECISIONS THAT WERE NOT POSTED

I reviewed a number of decisions that were not posted as proposals on the Registry. I reviewed whether the ministries had met the *Environmental Bill of Rights* public notice and comment requirements, and whether the ministries had considered their SEVs. The ministries had indicated that they were using common "Guidelines for Assessing the Environmental Significance of a Policy, Act, Regulation or Instrument." I wanted to know how effectively those guidelines identified environmentally significant decisions, which would then be subject to SEV consideration and Registry notice.

The ministries provided information showing that, because ministry definitions of "decision" and "environmentally significant" were too restrictive, ministries sidestepped public consultation and SEV consideration requirements on a number of environmentally significant decisions.

Decision was defined narrowly, for example, by the Ministry of Municipal Affairs when it indicated that the Minister's part in rejecting a City of Toronto request to regulate the idling of vehicles ("the idling by-law") was not a decision. The Ministry of Transportation said that deferring construction of the Eglinton Subway Extension did not constitute a decision. However, for the purposes of the *Environmental Bill of Rights*, when ministers exercise their discretion in deciding a matter with potential environmental impact, an environmentally significant decision is implied.

Ministries also interpreted "environmental significance" narrowly. For example, the Ministry of Agriculture, Food and Rural Affairs said cancelling the Niagara Tender Fruitlands program (which would have helped keep 2,000 acres of Ontario's fruitbelt lands in fruit production) would not affect the environment, and therefore the decision was not considered environmentally significant.

Ministry failure to subject these decisions to the *Environmental Bill of Rights* could be attributed to a number of factors. The "Guidelines for Assessing the Environmental Significance of a Policy, Act, Regulation or Instrument" may be too general or too specific to be useful; or, ministries may not be proficient in applying the guidelines; or, the minister may have decided not to apply them. I encourage ministries to review and refine the guidelines and ensure adequate staff training.

Some ministries said that some decisions had been made at Cabinet level. While it is true the *Environmental Bill of Rights* does not apply to executive decisions made by Cabinet, neither EBR public notice and comment, nor alternative public consultation, took place when these decisions were made. Just as the *Environmental Bill of Rights* seeks to open the door to environmental decision making, this tendency to shift environmental decision making to Cabinet level threatens to shut it again.

Decision

Ministry Response

Agriculture, Food and Rural Affairs

Cancellation of Niagara Tender Fruitlands Program

- established 1994 to protect 2,000 acres of Niagara tender fruit land from conversion to non-farming uses
- Province committed \$19 million/ Region committed \$1 million, over 10 years
- restrictive covenants on property titles based on payments to landowners
- voluntary landowner participation

- program is financial in nature
- Cabinet decision
- program was cancelled before it was implemented
- no impact on the environment
- EBR does not apply

Environment and Energy

Disbanding Three Environmental Advisory Committees

- the Advisory Committee on Environmental Standards (ACES), the Environmental Assessment Advisory Committee (EAAC), and the Municipal Industrial Strategy for Abatement Advisory Committee (MAC)
- three committees provided independent analysis, expertise and advice to minister
- EAAC and ACES provided high-quality public consultation on specific issues
- advice of EAAC and ACES to minister was made public, as were the public comments received
- EAAC was established in 1983, and produced over 60 reports in response to ministerial requests for advice
- ACES was established in May 1990, and produced recommendations on a number of environmental standards, including lead, NDMA, Lakefilling Guidelines, tritium and Guidelines for the Clean-up of Contaminated Sites

- advisory committees completed their jobs
- committees are sunsetted as part of a \$55-million cost-cutting initiative by the MOEE
- foundation has been laid for the ministry to take advantage of the new EBR Registry and do more direct consultation and standard setting
- ministry now has a sufficiently sound basis of advice and experience to ensure the effective operation of the Environmental Assessment Program

Regulation 482/95 to amend Regulation 73/94 made under the EBR

- exemption of Ministry of Finance from the EBR
- temporary suspension (for 10 months) of public notice requirements of the EBR for many decisions
- failure by the MOEE to post this Regulation on the Environmental Registry

- Cabinet Office took the lead on this decision
- Ministry of Finance relies on input from other ministries on matters of environmental significance
- exclusions from Registry requirements due to government restructuring are primarily financial and administrative
- SEV was applied and Section V (requiring integration of social, economic and other considerations) was emphasized

Cancellation of Clean Up Rural Beaches Program

- \$57 million committed in 1991 over 10 years
- financial assistance to rural landowners who undertake remedial action and adopt new practices as part of a local Water Quality Improvement Plan
- MOEE 1993/94 Report: "The ministry estimates that the \$5.9 million spent on program led to at least \$11.8 million in capital expenditures in local economies throughout rural Ontario — an investment that has created close to 150 new jobs"

- program cuts are necessary to achieve the government's fiscal objectives in the most environmentally and economically sound fashion, as called for in the ministry's SEV
- the following considerations were used:

Cancellation of Green Communities

- Program joint MOEE/MNR initiative to encourage local people, groups and businesses to use energy and water more efficiently and to reduce waste and prevent pollution
- ministry staff work with local communities on a wide variety of green projects
- Minister of Environment and Energy Brenda Elliott in a speech Nov. 27, 1995 (three days before program was cut): "Greening is essential to stimulate economic renewal. The Green Communities Initiative awakened a latent factor shared by all Ontarians - a strong sense of loyalty, support and commitment to our environment and our community"

1. refocus ministry role to emphasize direction setting through environmental and energy policy, standards and objectives
2. focus on environmental priorities which pose the greatest health or environmental risk and require provincial attention
3. shift from being a major funding partner for projects undertaken by others; instead facilitate the exchange of expertise and encourage innovative solutions and the formulation of partnerships

Reduction or Elimination of 19 Programs by MOEE

- **Reduced Spending:** Boards and Committees; monitoring, testing and standards development; program administration and support; conservation and planning; regional operations program delivery; compensation for emergency response
- **Elimination of Programs:** Municipal Recycling Blue Box; Municipal Recycling Support; Municipal 3Rs; Environmental Research; Industrial 3Rs; EnerSearch and Industry Renewables; Industrial Process Equipment Demonstration; Market Entry for Energy Efficient Technologies; Industrial Energy Retrofit; IESP Feasibility Studies; Industry Energy Partnerships; Transportation and Commercial Energy Management; Scrap Tire Management

Decision

Municipal Affairs

Rejection of a Private Bill Application proposing to enable City of Toronto to Regulate and Prohibit Idling of Vehicles and Boats (“idling by-law”)

- the Minister of Municipal Affairs indicated that he would not support an application by the City of Toronto for a bill to control idling engines and the resulting air pollution
- Bill would have imposed fines of up to \$10,000

Natural Resources

Cancellation of the Community Harvesting Conservation Agreement with Natives for Fish and Wildlife

- this program guaranteed the granting of agreed numbers of fishing and hunting licences to members of seven Indian Bands

Bill 26 Amendments to Statutes

- *Conservation Authorities Act*, including: municipalities given power to dissolve Conservation Authorities, province loses power to appoint members to boards of Conservation Authorities
- *Game and Fish Act*, including: all fees collected under the Act are to be held in Consolidated Revenue Fund for purposes of fish/wildlife/ecosystem management, or human activities related to fish and wildlife
- *Lakes and Rivers Improvement Act*, including: government given power to make regulations prescribing circumstances in which approval is required to construct or improve a dam
- *Public Lands Act*
- *Forest Fires Prevention Act*

Northern Development and Mines

Bill 26 Amendments to Mining Act

- MNDM Director not required to approve mine closure plan
- requirement to file annual report repealed
- confidentiality provided to mining companies on financial assurance
- option provided to mining company to surrender mining lands or rights under certain conditions and avoid liability under the *Environmental Protection Act*

Transportation

Cancellation of Toronto Transit Commission's Eglinton Subway Extension

- withdrawal of provincial support for a previously approved subway extension in view of a SEV commitment “to promote an integrated transportation system”

Housing

Transfer of Title of Ataratiri from City to Province

- province will take title to site of cancelled Ataratiri project
- many of these properties have some degree of soil and groundwater contamination

Cancellation of Non-Profit Units

- with the cancellation of 390 non-profit projects, a number of sites which may have been decommissioned could remain environmentally contaminated

Ministry Response

- not a decision
- merely a letter from the minister to mayor of Toronto urging a reconsideration of the “idling by-law”
- an opportunity for public participation would be provided through the requirement on the City of Toronto to publish notice of the application

- within the context of government's aboriginal program
- deemed not environmentally significant
- an administrative instrument within an existing regulatory framework
- does not affect sustainability of resource

- no response from ministry to date

- a response to Cabinet instruction to reduce costs, increase efficiency
- Closure Plan amendments more efficient, promotes economic growth and job creation
- “polluter pay principle” maintained
- other *Mining Act* amendments — strengthen areas to ensure rehabilitation of mine sites
- instrument approval timelines include the requirement to post notices on the Environmental Registry
- ministry has met the difficult task of meeting government direction without compromising environmental quality, hence complies with SEV

- not a decision; a deferral

- directly tied to government's need to reduce the deficit and therefore not appropriate to consult the public
- best means of promoting SEV principle #5: remediation strategies which integrate environmental and socio-economic considerations

- directly tied to government's policy agenda and the need to reduce the deficit and therefore not appropriate to consult the public
- ministry continues to promote SEV principle #5: remediation strategies which integrate environmental and socio-economic considerations through the requirement that the remaining non-profit sites must be decommissioned before the ministry will forward financial assistance to the non-profit organization to acquire the site

RECOMMENDATIONS:

1. All ministries tailor the environmental significance guidelines to their own particular operations, provide adequate staff training on the application of the guidelines, and ensure determination of environmental significance is trackable and reproducible.
2. All ministries integrate SEV consideration into existing decision-making tracking methods, explicitly apply SEV consideration to all environmentally significant decisions (including decisions on instruments), and ensure related documentation is part of the ministry file.
3. All ministries extend the 30-day minimum Registry posting time for complex, new or amended proposals for policies, Acts and regulations to enable informed public comment.
4. The Ministry of Environment and Energy develop criteria for determining emergency exceptions for landfill sites and make those criteria public through the Environmental Registry.

WHAT ARE REVIEWS AND INVESTIGATIONS?

The *Environmental Bill of Rights* allows Ontario residents to ask prescribed ministries to review existing environmental policies, Acts, regulations and instruments, or the need for new environmental policies or laws. These are called Reviews. Ontario residents can also ask prescribed ministries to investigate alleged contraventions of environmental laws. These are called Investigations.

When requested, my staff assist members of the public interested in using these processes. It is my responsibility to review and forward completed Review and Investigation Applications to the ministries responsible, and to report on how the ministries receive and handle Applications. A complete list of Applications received during the reporting period is available from my office.

HOW THE MINISTRY OF ENVIRONMENT AND ENERGY RECEIVED AND HANDLED APPLICATIONS

During the reporting period, the Review and Investigation processes applied only to the Ministry of Environment and Energy, which met all the procedural requirements for receiving and handling Applications.

I forwarded 313 Applications for Review and 13 Applications for Investigation to MOEE (see Tables). The Ministry met all of the required timelines for acknowledging receipt of Applications to applicants and to my office, and for determining whether to conduct a Review or Investigation. Where Investigations were undertaken, but not completed within the required 120-day period, the Ministry provided the required notice of time extensions to the applicants. I encourage all ministries to set similar goals.

Applications for Review (MOEE)

Total Forwarded to MOEE	313
Reviews undertaken	227*
Reviews completed	0
Reviews denied	53**
Returned to ECO	33

* These 227 applications related to 2 topics:
(1) tritium and (2) soft drink regulations

** These 53 applications related to 14 different topics

Applications for Investigation (MOEE)

Total Forwarded to MOEE	13
Investigations undertaken & completed	3
Investigations denied	9
Not yet decided	1

COMPLIANCE WITH INVESTIGATION PROCEDURES

I undertook a detailed review during this reporting period with the following objectives: to determine whether the Ministry of Environment and Energy complied with the legislated requirements for Applications for Investigation; and whether it had adequate procedures for dealing with those Applications. Although not required by the *EBR*, the Ministry often proposed alternatives to applicants when an Investigation was not undertaken.

Overall, I observed that:

- The Ministry's process for considering Applications for Investigation is well designed and that receipt and handling procedures comply with the *Environmental Bill of Rights* and support accountability for each stage in the process
- The Ministry processed Applications for Investigation within the required timelines
- Where an investigation was already underway, the Ministry reported the results of that investigation to the applicants within the timelines that an Investigation under the *Environmental Bill of Rights* would require
- The Ministry issued all required correspondence
- Procedures were documented and duties and responsibilities were clearly assigned to units and employees
- The Ministry had clear criteria for accepting or denying Investigations
- All applicants denied an Investigation were told why based on *Environmental Bill of Rights* criteria
- If the Ministry decided not to conduct an Investigation and an alternative existed, the Ministry tended to suggest it to the applicants

DISPOSITION OF APPLICATIONS

Out of 16 different topics raised in Applications for Review, two were reviewed by the MOEE. Out of 13 Applications for Investigation, three were undertaken and completed by the MOEE.

MINISTRY PRIORITIES FOR CONDUCTING REVIEWS

Reviews take time and resources. The *Environmental Bill of Rights* allows ministries to set priorities for conducting thorough Reviews of policies, Acts, regulations and instruments.

In late 1995, I asked the MOEE about the status of the Reviews it accepted during the 1994-95 reporting period. In a letter dated January 15, 1996, the Ministry indicated that it expected to complete its Review of the Ontario Drinking Water Guideline for Tritium in late 1996.

Ontario Drinking Water Guideline For Tritium

Issues

Concern over the Ministry of Environment and Energy's decision to establish an interim Ontario Drinking Water Objective (ODWO) for the level of tritium in drinking water at 7,000 becquerels per litre (Bq/L) generated the most Applications for Review. These Applications were based on a public campaign by Energy Probe, a Toronto-based environmental group.

Tritium is a radioactive form of hydrogen that is known to be carcinogenic. While tritium is found naturally in the environment, the majority of tritium in Lake Ontario is a by-product of nuclear reactor operations. The original ODWO was based on the Canadian Drinking Water Guidelines for radionuclides.

The Advisory Committee on Environmental Standards (ACES) conducted an independent public review of the standard established by MOEE's Standards Development Branch for tritium in the water. The ACES review of a report developed by MOEE's Standards Development Branch resulted in different recommendations concerning tritium levels in drinking water. MOEE recommended that an interim ODWO of 7,000 Bq/L be adopted but the ACES report recommended that tritium levels be set at 100 Bq/L and reduced to 20 Bq/L over the next five years. While the ACES report calculated the safe human exposure to tritium based on the lifetime exposure of an individual, the MOEE report was based on individual exposure over one year.

The Review applicants believed that the decision by MOEE to implement the recommendations of an internally developed report rather than the review performed by an independent, scientific panel like ACES reflects a lack of stringent guidelines for radioactive carcinogens in Ontario.

Outcome

MOEE is reviewing the interim Ontario Drinking Water Objective for Tritium and will make its decision in the latter part of 1996.

The Ministry also expects to complete its Review of the *Environmental Protection Act* regulations governing Refillable Beverage Containers in the first quarter of 1997.

APPLICATIONS DENIED

While the Ministry of Environment and Energy met the procedural requirements for Applications, some members of the public expressed concern about how the Ministry applied its criteria for deciding whether to pursue Applications. The Ministry of Environment and Energy rejected the majority of Applications for Review and Investigation, even though many had merit and raised important public policy issues, including drinking water standards, air pollution control, groundwater protection, and landfill and waste matters.

ISSUES RAISED BY APPLICATIONS

1. DRINKING WATER

I received a number of Applications involving drinking water. The Ministry of Environment and Energy concluded none of the issues raised warranted a Review. As a result, I reviewed in detail two Applications for Review. These Applications asked the Minister of Environment and Energy to develop drinking water standards for trichloroethylene (TCE) and cryptosporidium.

TRICHLOROETHYLENE

Trichloroethylene is used primarily in dry cleaning and metal-degreasing operations. It is released mainly to the air, but may be introduced into surface and groundwater in industrial effluents. Canada classes TCE as a possible human carcinogen, the World Health Organization lists it as nonclassifiable, and the United States Environmental Protection Agency deems it as a probable human carcinogen.

MOEE rejected this particular Application for Review because: "The Ontario Drinking Water Objectives were revised in 1994, and include an objective for trichloroethylene which is currently under review by Health Canada and the Federal-Provincial-Territorial Subcommittee on Drinking Water. Following the completion of this initiative, which is expected in 1996, Ontario will consider adopting the revised guideline as an Ontario Drinking Water Objective."

The Canadian/Ontario drinking water guideline for trichloroethylene is nearly 10 years old. As noted above, it was under review when MOEE responded to this particular Application. However, I discovered that TCE earned low priority on the Federal-Provincial-Territorial Subcommittee's agenda.

In the short term, I urge MOEE to assess the occurrence of TCE in Ontario's drinking water supplies using existing data from the MOEE's Drinking Water Surveillance Program. This should help MOEE decide if more action is needed, such as more intensive sampling of water supplies which appear to be at risk. Depending on the size of the risk, MOEE should consider a more stringent interim guideline until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.

Although MOEE's decision to forgo this Review may have been appropriate at the time, the fact that the Subcommittee may not review TCE any time soon suggests the need for further examination by MOEE. Indeed, the Ministry may wish to develop a tracking procedure for revisiting these kinds of issues.

If the Ministry intends to cite future reviews by scientific panels like the Federal-Provincial-Territorial Subcommittee on Drinking Water as a reason for not performing EBR-related Reviews, then MOEE should verify the status of the Subcommittee review process and approximately when a new guideline (or reconfirmation of the existing guideline) will be available.

CRYPTOSPORIDIUM

All surface water, and groundwater influenced by surface water, is potentially vulnerable to cryptosporidium contamination. Cryptosporidium is a protozoan parasite that causes disease in humans and other hosts. In many cases, water treatment practices need to be upgraded to remove cryptosporidium and defend against the organism.

As in the TCE Review Application, the Ministry of Environment and Energy decided not to conduct a Review on cryptosporidium with respect to Ontario's Drinking Water Objectives because the Federal-Provincial-Territorial Subcommittee on Drinking Water is already reviewing the issue.

On one hand, MOEE's decision is reasonable since the matter is under consideration by the Subcommittee. On the other, a guideline for cryptosporidium may be subject to much discussion before it is accepted by the Subcommittee. In the interim, MOEE should assess the needs of the approximately 40 surface water treatment plants in Ontario which are potentially vulnerable to cryptosporidium. For plants which are most vulnerable, planning for the installation of filtration should proceed, unless it can be shown to be unnecessary. MOEE and MOH should also consider installing cryptosporidium detection methods at the most vulnerable plants to provide early warning of an outbreak.

Since MOEE responded to this Application, an outbreak of cryptosporidiosis was confirmed in Collingwood. Although not proven, the water supply is suspected as the source. Similar outbreaks have been documented in other Ontario communities. These outbreaks suggest that the water supply could be vulnerable because the treatment does not include filtration. The Collingwood outbreak underlines why MOEE should take a proactive approach to protecting Ontario's drinking water from cryptosporidium.

2. AIR POLLUTION

Air pollution emissions from smokestacks continue to pose problems. MOEE frequently deals with complaints about air quality and odour. In fact, these complaints represent about 80 per cent of all complaints received by the MOEE's regional offices.

Because Certificates of Approval for air emissions are not updated regularly, they may not reflect current environmental standards or public expectations. In 1990, MOEE proposed major revisions to smokestack emissions regulations and planned to deal with an estimated 20,000 air pollution sources. These positive changes would have required reviewing Certificates of Approval every 10 years, and ordering emitters to regularly upgrade their emission controls. Best management practices were also promised as a routine part of Certificates of Approval. Regrettably, these regulatory reforms were never implemented.

Several Applications cited the local effects of daily or occasional air emissions from asphalt plants, smelters, cement companies and metal stripping operations.

Excessive Factory Smoke

Issues

The applicants alleged that a factory was releasing too much black smoke into the air. MOEE did not conduct an Investigation because, prior to receiving the Application, it had scheduled a routine inspection of the factory's waste-management practices. The Ministry sent a copy of the inspection report to the applicants. The inspection report was issued within the same timelines required for an Investigation under the EBR and the inspection also examined areas not mentioned by the applicants.

Ministry staff visited the factory and found various deficiencies in its operations, including outdated Certificates of Approval, no assessment of smoke levels and contaminants, the discharge of waste in sewers in compliance with municipal by-laws but without provincial Certificates of Approval or guidelines, and a dated environmental contingency plan.

Outcome

The Ministry asked the factory to make improvements to its operations, some required by law, others "strongly recommended." The Ministry also required the factory to give a written workplan and implementation schedule of the improvements within a month of the report.

Conclusions

Ministries need to help businesses by making recommendations to improve operations and promote pollution prevention, not just when a law or regulation has been violated. The Ministry is commended for asking the factory to submit a written workplan and implementation schedule of requested improvements.

Countdown Acid Rain Program

Issues

Ontario's Countdown Acid Rain Program concentrated on regulating emissions from four corporations which together produce approximately 80 per cent of sulphur dioxide emissions in the province. The goal of the program, which is run by MOEE, was to reduce acid rain-causing industrial emissions from the 1980 base level of 2,194 kilotonnes per year to 877 kilotonnes per year in 1994. MOEE's monitoring has shown that all four companies have met the regulated targets, and in fact have done better than the requirements.

The applicants believed that not enough is being done to prevent damage from the emissions from a high smokestack used by a metals refinery and that these emissions affect forests and lakes in the Muskoka area. Applicants noted their concern about other high smokestack pollutants, including arsenic, lead and aluminum. They also said MOEE does not use appropriate wind pattern information when monitoring such emissions.

Outcome

MOEE declined to undertake a Review, citing the successes of the Countdown Acid Rain Program. It also pointed out that the control processes used to reduce acidic emissions from the superstack reduced heavy metal emissions by approximately 50 to 75 per cent since the early 1980s. MOEE stated that further improvements are expected.

Conclusions

Ministers can decline Reviews on the grounds that the matters are otherwise subject to periodic review. In this case, the Ministry has been conducting periodic reviews using independent auditors through its Countdown Acid Rain Program.

In most cases, the Ministry was aware of these longstanding concerns and decided not to conduct an Investigation or Review, an investigation had been undertaken previously, or the ministry was involved in ongoing negotiations to reduce emissions.

One Application noted MOEE's reliance on a dilution approach to air pollution which encourages construction of high smokestacks, without reducing overall air pollution loadings or seeking pollution prevention.

Several Applications pointed to a perceived lack of service for air pollution complaints. One said local residents often saw a factory stack emitting late at night. Several applicants were frustrated because repeated complaints produced no action.

In most situations MOEE staff have no relevant monitoring data when they try to follow up on complaints about air emissions from specific sources. It is not clear what criteria MOEE staff use to evaluate eyewitness evidence, or how they decide to deploy available monitoring equipment.

Underlying factors like historical land-use zoning, Ontario's aging manufacturing infrastructure, outdated Certificates of Approval, reliance on dispersion of air pollutants, and inadequate monitoring of specific sources all mean MOEE can expect to spend more of its limited resources addressing complaints about unacceptable air emissions in the future. Public resources might be better used addressing these factors.

In the past MOEE reviewed new land use plans and policies to prevent such conflicts from occurring in future. It is no longer clear if these reviews will continue under the *Planning Act* as amended by Bill 20. Regardless of who conducts environmental reviews after the passage of Bill 20, Ontario must take a preventative approach to air pollution problems.

3. GROUNDWATER

About 23 per cent of Ontario's population relies on groundwater (see Glossary) for drinking water. Moreover, groundwater is the only source of water for about 90 per cent of the rural population. Once impaired, restoring groundwater is difficult and expensive.

MOEE is responsible for managing and protecting groundwater resources. The Ministry of Consumer and Commercial Relations regulates fuel storage in underground tanks to prevent leaks into groundwater, while the Ministry of Transportation and Ontario municipalities are responsible for the effects of road salt on groundwater.

MOEE is also responsible for ensuring proper installation and operation of water wells. Under the *Ontario Water Resources Act (OWRA)* MOEE licenses all well contractors/drillers and well technicians.

Groundwater can be impaired by wastewater treatment infiltration basins, landfills, waste disposal into deep wells, spray irrigation, sludge use or disposal operations, septic tank systems and mine tailings — all of which are regulated through Certificates of Approval issued by MOEE.

A number of activities that do not require specific approvals under the *OWRA* or the *EPA* can also contribute to groundwater contamination, including improper crop fertilization, manure application and salt spreading, salt storage, unlicensed and closed landfills, and leaks and spills. Unlike some jurisdictions, Ontario has no specific legislation or programs to designate or protect significant groundwater recharge areas.

Thirteen Applications requested a Review of the way Ontario manages groundwater. Applicants called for a more comprehensive, preventive approach to groundwater protection and cited the cost of cleaning

up contaminated groundwater.

Applicants were concerned that MOEE can only require cleanups after contamination, and that staff with hydrogeological expertise are few and far between. They also worried that municipal and regional governments wanting to act on groundwater protection have limited jurisdiction to do so. MOEE declined these Applications for Review, stating that current laws and regulations adequately protect Ontario's groundwater.

Protection of groundwater quality is a challenge we must meet given the large numbers of potential contamination sources. Detection of contamination is often difficult, and may occur years later, sometimes making it impossible to identify the responsible person or company.

For example, MOEE can only inspect a small percentage of Ontario's septic systems. Recently, its Cottage Pollution Control Program inspected about 1,000 systems annually. Meanwhile, approvals for approximately 40,000 new septic systems are issued every year.

Many contaminant sources affect the quality of Ontario's vital groundwater. Effective control of these contaminant sources is impeded by inadequate legislation, plus inadequate inspection and enforcement resources.

Some provincial resource managers are recognizing the need for more action on groundwater protection. For example, in 1993 MOEE and MNR jointly published several guidance documents encouraging municipalities to manage water on a watershed basis. They proposed that watershed management plans include groundwater management and recommended that baseline information include location maps for groundwater, the direction of groundwater movement, recharge zones and the susceptibility of groundwater to contamination.

Clearly, MOEE and MNR saw conservation authorities as the right choice for coordinating the preparation of watershed plans. However, provincial funding for conservation authorities across Ontario has been cut 70 per cent, while their mandate is now restricted to flood control. Given the financial constraints of Ontario municipalities, it is not likely many of them will voluntarily take on new responsibilities like groundwater management. At the same time, MOEE and MNR also face substantial funding reductions, and early indications are that environmental monitoring programs will be particularly affected.

While MOEE declined to conduct a Review of its groundwater policy, in an interview with the *Kitchener-Waterloo Record* in November 1995 the Honourable Brenda Elliott called for a strategy for groundwater protection: "I'm anxious to see what has been done and if we can do that better."

Cost-effective protection strategies are possible. For example, in 1993 the Commission on Planning and Development Reform recommended that MOEE inspect all private and communal septic systems every five years, and implement a user fee to cover costs. This recommendation has not been implemented.

Ontario's groundwater management framework should be reviewed and updated. This would require active participation and co-operation from MOEE, MNR, MCCR, OMAFRA and MTO, which should start by compiling current, accurate groundwater data, plus statistics on inspections of potential contamination sources and enforcement of relevant legislation — information that should be made public. (I was pleased to receive a letter dated February 19, 1996 from MOEE stating: "The Ministry of Environment and Energy, in conjunction with the Ministry of Natural Resources, Ministry of Agriculture, Food and Rural Affairs, and the Ministry of Municipal Affairs and Housing, is currently in the process of developing an integrated strategy for the management and protection of the groundwater resource.")

Groundwater Contamination Activities

Spills:

MOEE documents approximately 5,000 spills annually in Ontario. About 900 of the spills reported in 1992 involved soil contamination.

Septic systems:

Ontario has approximately one million conventional septic systems. About 30 per cent are malfunctioning and discharge sewage to either surface or groundwater. MOEE studies in Muskoka and Haliburton found one-third of septic systems inspected were designed below standards.

Leaking Underground Storage Tanks:

Approximately 200 spills from such tanks are reported to the Ministry of Consumer and Corporate Relations' Fuels Safety Branch each year. While MCCR estimated the average cost of an individual site cleanup after a spill of petroleum products is \$200,000, sometimes costs climb into the millions. By some estimates, Ontario has about 34,000 underground storage tanks containing gasoline, oil, aviation fuel and a variety of other chemicals. In 1986, Environment Canada estimated that between five and 10 per cent were leaking.

Road Salt:

Wherever road salt is spread, the potential for groundwater contamination exists. Well contractors recommend that wells be located some distance from highways to avoid this threat. In 1990-91, approximately 700,000 tonnes of salt were used on Ontario's roads. The next year, that number dropped to 640,000 tonnes, the result of a salt-reduction program by the Ministry of Transportation. In 1992-93, the MTO's salt-reduction target of 150,000 tonnes was projected to save about \$6.5 million.

Pesticides:

While Ontario farmers have reduced their use of pesticides in recent years, pesticides are still a key to controlling weeds and crop pests. For example, in 1991 farmers reported pesticide expenditures averaging more than \$4,000 per farm. Pesticide application may result in pesticide residues in local groundwater. In the winter of 1991-92, approximately 1,300 domestic farm wells in Ontario were sampled for pesticide residues and were resampled that summer. In the winter survey, some eight per cent had detectable levels of pesticide residues, as did 12 per cent in the summer. While agriculture accounts for approximately 70 per cent of pesticide use, residues may also enter groundwater after being applied to golf courses, public parks, residential gardens and highway rights of way.

4. LANDFILL SITE MANAGEMENT

Ontario has 1,400 active and almost 2,500 closed landfill sites. This includes many older landfills still operating under permits issued in less stringent regulatory times. MOEE has classed approximately 40 per cent of the active sites as having the potential to affect human health. And, once closed, sites do not automatically stop producing leachate.

I received three Applications for Investigation concerning existing landfill site management during the reporting period. MOEE conducted a preliminary investigation in one case and a more complete one in a second case. MOEE did not conduct the third Investigation because it would duplicate an investigation done the previous year.

While the Ministry agreed there was leachate migration off-site in two cases (into a creek and into groundwater), neither Investigation led to prosecution. However, MOEE states it will continue to monitor leachate impacts, and will encourage abatement activity by landfill site operators.

The fairness and efficacy of the "reasonable use" policy for groundwater, which is specifically related to the application of two MOEE guidelines, arose in several Applications. Basically, these guidelines set an upper limit on the amount of contamination that owners of adjacent properties should have to tolerate. Since landfill leachate may contain hundreds of different contaminants, the guidelines permit degradation of groundwater depending on whether the specific contaminant is health or non-health related.

Neighbours must rely on the results of year-to-year monitoring of groundwater to see if contamination levels have surpassed the reasonable use threshold. This has serious limitations, including doubt about whether current methods accurately estimate the quantity or type of contamination that will be discharged by a disposal facility.

One applicant raised concerns about continued dumping of household hazardous waste at landfill sites. If landfill sites do not have effective leachate controls, contaminants from household hazardous waste will eventually migrate to groundwater.

Applicants also pointed to the management of existing landfill sites. They were concerned about too much focus on leachate clean-up and crisis management, and too little on prevention. They also complained about odour, dust and noise.

Based on my review, and MOEE's approach to handling landfill management disputes, I expect that landfill management practices will continue to attract the attention of adjacent landowners and the public.

Both municipalities and MOEE must minimize the environmental effects of Ontario's existing landfill operations. A review of provincial rules and guidelines governing landfill operations would reduce current threats. A review must be open and participatory, and reflect the regional diversities of waste-disposal practices in Ontario. If such a review reveals that increased resources are needed, then those resources must be provided either from general revenues or dedicated user fees. Ultimately, the benefits of protecting human health and groundwater are worth substantial investment.

Leachate Leakage From Landfills

Issues

The applicants alleged that leachate from a landfill was leaking onto their property and that the leachate was harming the quality of their groundwater, which could otherwise be used as drinking water. The applicants also alleged that there was litter, blowing dust, noise, odour and uncovered garbage at the landfill, contravening regulated standards for landfill operations.

The Ministry of Environment and Energy conducted an Investigation into whether the contaminant leakage violated the Ontario Water Resources Act and whether the landfill violated the Environmental Protection Act. Ministry staff reviewed records and reports of previous inspections and the information provided by the applicants, and conducted some water tests in areas near the landfill. The applicants complained about the time this took, but the Ministry met the timelines required by the EBR.

Outcome

The Ministry concluded that the leachate leakage did not significantly harm the surface water beyond the landfill. The groundwater beyond the landfill had a contaminant, dichloromethane, at 35 parts per billion (ppb), a level above Ontario's "Reasonable Use Limit" (12.5 ppb) but still below the 50 ppb level prohibited by Ontario's drinking water standards. Since the contamination was never above the level prohibited by the Ontario Drinking Water Objectives and was still declining, and measures to prevent further contamination were installed, the Ministry did not prosecute.

The Ministry did not consider the other problems like odours, blowing dust, noise and litter significant enough to violate the Environmental Protection Act. The blowing dust and noise were not considered ongoing problems by immediate neighbours of the landfill, and odour and litter problems were resolved whenever Ministry staff told the landfill operator to take corrective action. The Ministry stated that some of these nuisances will occur from time to time because of routine landfill operations.

5. SOFT DRINKS AND PACKAGING WASTE

During the reporting period, I received one Application requesting a Review of Ontario government policies on packaging wastes, and one requesting an Investigation of the use of refillable and recyclable non-refillable soft drink containers.

The MOEE responded to one Application by looking into the soft drink sales of the companies cited and even went so far as visiting convenience stores to count drinks sold in different containers. The law was indeed being broken. The Ministry then told the applicants it would not be laying charges because of ongoing discussions between MOEE and the industry on how to meet the required refillable ratios. The Ministry also indicated it was waiting for the results of two studies concerning soft drinks and packaging wastes.

In reviewing this decision, I concluded that all commercial sectors involved in packaging waste achieved substantial increases in packaging recycling in the last 10 years. In light of past progress, I concluded the Ministry's decision to await the outcome of the studies made sense. However, once the results are in, the Ministry should explain what changes, if any, it will make and place the proposal on the Environmental Registry.

Soft Drink Container Regulations

Issues

Since the late 1980s, the Ministry of Environment and Energy has not enforced Ontario's soft drink container regulations. Regulations 340 and 357 of the Environmental Protection Act deal with soft drink containers. The first encourages the recycling of non-refillable containers and the second encourages reuse of refillable containers; the latter also requires soft drink companies to sell their products only in refillable containers (e.g., a money-back glass bottle). Still, Regulation 340 allows them to sell a certain ratio of soft drinks in recyclable non-refillable containers (e.g., metal cans, recyclable plastic bottles). A company may sell soft drinks in either refillable or recyclable non-refillable containers, provided that, annually and monthly, at least 30 per cent by volume of each brand is sold in refillable containers.

However, all parties agree that no soft drink company has met that requirement. Since 1991, the soft drink industry, in consultation with the Ministry and other stakeholders, has explored ways to increase refillable container sales. In 1995, the industry was working on two pilot projects to evaluate the potential use of plastic refillable bottles.

The applicants alleged that two soft drink companies sold fewer than 30 per cent of their soft drinks in refillable containers from 1991 to 1994. MOEE reviewed the two companies' sales reports from May 1994 to May 1995, concluding that the companies did not sell 30 per cent of their soft drinks in refillable containers in any month during that period.

Outcome

The Ministry found the two companies violated Regulations 340 and 357. However, it did not lay charges because of a concern that it would be inappropriate to prosecute while the Ministry and the industry are working together to find a solution. The Ministry is also awaiting the completion of two industry studies of the issue.

A Sustainable Packaging And Distribution System

The Ontario government has the opportunity to set ground rules to promote a sustainable system for packaging and distributing food and beverages that:

- Conserves energy
- Maximizes environmental benefits and minimizes environmental effects
- Lets consumers choose and enjoy high-quality products
- Keeps Ontario's industry competitive
- Shifts responsibility for managing packaging waste from taxpayers to the producers and users of packaging

RECOMMENDATIONS:

1. The Ministry of Environment and Energy assess the occurrence of trichlorethylene in Ontario's drinking water supplies using existing data from its Drinking Water Surveillance Program. MOEE should then decide if further action is required, such as more intensive sampling of water supplies which appear to be at risk. Depending on the magnitude of the risk, MOEE should consider a more stringent guideline on an interim basis until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.
2. The Ministry of Environment and Energy assess the needs of the approximately 40 surface water treatment plants in Ontario which are potentially vulnerable to cryptosporidium. For plants which are most vulnerable, planning for the installation of filtration should proceed, unless it can be demonstrated to be unnecessary. MOEE and the Ministry of Health should also consider installing cryptosporidium detection methods at the most vulnerable plants to provide early warning of a breakout.
3. The Ministry of Environment and Energy verify the status of reviews by the Federal-Provincial-Territorial Subcommittee on Drinking Water and other scientific panels before citing such reviews as a reason to decline Applications for Review under the *Environmental Bill of Rights*.
4. The Ministry of Environment and Energy address public concerns about air pollution from smokestacks by focusing more resources on resolving the underlying factors within its mandate, including outdated Certificates of Approval, inadequate monitoring of sources, and regulations which focus too heavily on short-term concentrations of pollutants and not enough on long-term loadings to the environment.
5. The Ministry of Environment and Energy and the Ministry of Municipal Affairs and Housing, in their role of reviewing and approving municipal land use plans, establish and apply guidelines to help prevent future land use conflicts caused by air emissions.
6. Ministries cooperate to review and upgrade Ontario's groundwater management framework. These ministries would include the Ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation. As a first step, ministries should compile current, accurate information on groundwater data, as well as statistics on inspections of potential contamination sources and enforcement of relevant legislation. This information should be made public.

7. The Ministry of Environment and Energy, working with municipalities, focus more efforts on minimizing groundwater and other environmental impacts of existing landfill operations. These efforts should include a shift in focus from merely monitoring leachate plumes in groundwater to an increased emphasis on preventing such contamination. A first step might be a review of existing provincial rules and guidelines governing landfill operations. Such a review should involve the public, and reflect the regional diversities of waste disposal in Ontario.
8. The Ministry of Environment and Energy announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently under way are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of Environment and Energy should begin to enforce the refillable soft drink container regulations under the *EPA*.
9. Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the EBR and cite any additional relevant factors in their decision such as limited resources required to carry out a review. Whenever possible, valid concerns of the Applicants should be addressed.
10. Ministries follow the lead of the Ministry of Environment and Energy whose procedures for the receipt and handling of Applications for Review and Investigation are exemplary.

WHAT IS AN INSTRUMENT?

Companies and individuals do things that affect the environment. In many cases, they must receive approval from the provincial government before doing so. For example, installing a septic system or air pollution control equipment or pumping large quantities of groundwater requires ministry approval. These approvals are called instruments.

The *Environmental Bill of Rights* requires ministries to classify certain instruments to reflect their environmental significance. This is important because classification determines which types of approvals, permits or licences will be posted for public comment on the Environmental Registry, and how much public participation will take place during the decision-making process on that instrument.

Only the Ministry of Environment and Energy was required to classify its instruments during the reporting period. Ultimately, three other ministries will follow suit, guided by MOEE's experience. I advise those ministries to prepare adequate background information about their instruments so that the public can provide meaningful input into their classification proposals.

MOEE'S INSTRUMENT CLASSIFICATION REGULATION

After limited public consultation, the Ministry of Environment and Energy released its draft regulation on instrument classification in August 1993. The Ministry provided no regulatory impact statement or background information to show the significance of classifying some instruments while excluding others. Instead, it released a set of proposed instrument classifications, invited public comment, and released the final regulation in October 1994.

The Task Force on the *Environmental Bill of Rights* underscored the importance of public input in 1992 when it recommended consultation before MOEE finalized its classification regulation. Taking stock of MOEE's minimalist approach, I encouraged the three other ministries — Natural Resources, Consumer and Corporate Relations, and Northern Development and Mines — to start the classification process in late 1995, and to consult broadly on their draft regulations. These three ministries must classify their instruments within a reasonable time after April 1, 1996.

MOEE'S CLASSIFICATION OF INSTRUMENTS

MOEE classified more than 30 types of instruments issued under the *Environmental Protection Act*, the *Ontario Water Resources Act*, and the *Pesticides Act* during the reporting period. MOEE issues between 2,500 and 3,500 classified instruments a year.

Because MOEE released no information about the numbers or types of instruments it issues annually, or a regulatory impact statement, it was difficult to evaluate the ministry's proposed classification system.

For example, anyone who wants to take more than 50,000 litres of water per day from any water source has to apply to the MOEE for a Permit to Take Water. These permits are classified instruments, except for Permits to Take Water for irrigating farm crops and Permits to Take Water for periods of less than one year, which have not been classified and do not show up on the Registry.

It may be that these types of Permits to Take Water are not classified because few are issued under these two exceptions, or because they are not deemed to be environmentally significant. However, in parts of Ontario where groundwater shortages occur, even a single new user pumping more than 50,000 litres every day could affect local groundwater levels. Had the MOEE offered more information about how many instruments it issues every year under these two exceptions, and reasons for excluding them, the public would have been able to provide informed comment.

MOEE reported to me later that it issues about 113,000 instruments annually. More than 80,000 are for private septic systems. In other words, about 33,000 of the MOEE's annual instruments are not septic permits, and approximately 2,700 of these (fewer than 10 per cent) have been classified as environmentally significant.

CUMULATIVE ENVIRONMENTAL EFFECTS AND CUMULATIVE POSTING

MOEE's decision not to classify certain types of high-volume instruments, like permits for private septic systems, is pragmatic and, in some respects, reasonable. Still, over time many small isolated decisions can have significant cumulative environmental effects.

It is important to identify factors that contribute to the slow deterioration of natural resources, and we need the data early on. We must also be able to identify unexpected regional clusters of certain types of instruments which might indicate inconsistent application of policies across the province.

Currently, Ontario does not adequately monitor or inform the public about many types of individual environmental decisions. Ministries do not systematically report absolute numbers of instruments issued, nor do they compare instruments from region to region or from year to year.

The Environmental Registry should be used to track and report on certain high-volume instruments that may have cumulative environmental effects. Indeed, ministries could post aggregate numbers of certain types of approvals or licences issued annually or semi-annually.

This approach should be applied to approvals for Ontario's approximately one million septic systems. MOEE studies show 30 per cent of those septic systems may be malfunctioning. Moreover, the Ministry approves approximately 40,000 new septic systems each year. An individual septic system may not affect the environment much but, over time, many can overwhelm the capacity of lakes and groundwater to deal with the effluent.

RECOMMENDATIONS:

1. Ministries complete their instrument classification process and consult with the public on classification proposals and amendments to classification regulations.
2. Ministries determine those high-volume instruments which are likely to produce cumulative environmental effects, and post annual statistics for these non-classified instruments on the Environmental Registry.



APPEALS

The right of “third parties” (see Glossary) to apply for leave to appeal ministry decisions on certain types of instruments is an important legal innovation established by the *Environmental Bill of Rights*.

Acknowledging that members of the public often have an interest in a ministry’s decision to issue an instrument, along with the environmental safeguards that the ministry has put in place, the *Environmental Bill of Rights* gives third parties (downstream users of water or factory neighbours, for example) the right to ask an independent tribunal to grant them a hearing.

If other realms of public policy with more inclusive appeal rights are relevant precedents, this new leave to appeal process will encourage better decisions.

USING THE APPEAL PROVISIONS

The Chair and staff of the Environmental Appeal Board, the first appeal body required to hear leave to appeal applications under the *Environmental Bill of Rights*, developed guidelines to make this new process as smooth as possible. I appreciate the Board’s support and I look forward to working with other appeal tribunals in the future.

Fourteen applications for leave to appeal were made during the reporting period. They all related to MOEE decisions, and 10 of them concerned approvals sought by Petro-Canada Products in Mississauga (see Box).

REQUIRING ADJUDICATION WITHIN 30 DAYS

Appeal tribunals must decide whether to grant leave to appeal within 30 days after the day the leave application is filed (in unusual circumstances, the tribunal can take more time). For the first leave applications, that 30-day timeline proved too short.

Requests by parties for more time to present their positions ranged from one to four months, and these delays were of concern to proponents seeking approvals and permits from MOEE. These delays seem due to several factors: all parties are interpreting the appeal provisions with particular caution; the issues before the Board are often complex; and the lawyers involved often have competing demands on their time.

EARLY APPEAL RESULTS

Of the 14 applications for leave to appeal made during the reporting period, two were decided during that time, one was withdrawn, and decisions on the remaining 11 were pending at the end of December 1995.

In its first two decisions the Environmental Appeal Board rejected both applications. While it supported the public’s opportunity to influence decisions, the Board did not find compelling reasons to grant the applicants a full hearing.

The third-party appeal right is not likely to generate volumes of applications. However, the intense interest in certain instrument decisions shows that the process will prove valuable when competing uses of the environment are not resolved satisfactorily.

Petro-Canada Leaves To Appeal

Tribunal

Environmental Appeal Board

Issues

The Petro-Canada leave to appeal applications involved two separate decisions. The first was an approval by the Ministry of Environment and Energy under the Ontario Water Resources Act for sewage works required as part of a new 8,000-barrels-per-day lubricants production process. The second was an MOEE approval for air emissions under the Environmental Protection Act allowing four new heaters and a change in the servicing of an existing heater required as part of the new lubricants production process. (For more detail, see Part 5: Ministry Environmental Decision Making.)

There were five applicants for leave to appeal both of these decisions. An access to information issue arose under the Freedom of Information and Protection of Privacy Act when a request for technical information was initially refused. This lengthened the time necessary for the Environmental Appeal Board to make a decision on the appeal application.

Outcome

The Board's decision is pending.

The First EBR Leave To Appeal Application: The Hunter Decision

Tribunal

Environmental Appeal Board

Applicant And Instrument Holder

Mr. Albert Hunter Jr., applied for leave to appeal a decision of a Director of the Ministry of Environment and Energy to issue a Certificate of Approval to operate eight air emission points at a wood product plant of OSBBBC Ltd., a subsidiary of Boise Cascade, a large pulp and paper company.

Decision

In its reasons for the decision released in September 1995, the Environmental Appeal Board found that Mr. Hunter passed the initial "direct interest" test because he was a neighbour who might potentially suffer adverse effects from the proposed facility's air emissions. The Board turned down the application based on the first aspect of the leave to appeal test; the reasonableness of the Director's decision. The Board was satisfied that the Director acted reasonably in applying standard Ministry procedures to determine that emission levels from the facility would be within acceptable levels set by regulation. Accordingly, it dismissed Mr. Hunter's application.

Issues

Mr. Hunter raised concerns about the appropriateness of the Registry as a tool for public participation in the North, particularly where the minimum 30-day comment period is used. For example, members of the public in Northern or rural Ontario could have difficulty getting Registry information, because they have to travel long distances to do so. The Board noted that while the adequacy of the public consultation in this case did not bring the reasonableness of the Director's decision into question, there could be situations where the public notice is so inadequate that even if it met the minimum requirements under the EBR, it could make a Director's decision unreasonable and result in a decision that harms the environment.

THE RIGHT TO SUE

The *Environmental Bill of Rights* gives Ontario residents the right to sue anyone who is breaking, or about to break, an environmentally significant Act, regulation or instrument and has caused, or will cause, harm to a public resource. It also allows people to sue for personal damages caused by a public nuisance. These rights were not used during the reporting period.

WHISTLEBLOWER RIGHTS

The *Environmental Bill of Rights* provides protection from workplace reprisals to employees who blow the whistle on the unsafe environmental practices of their employers or participate in the processes established by the *EBR*. There were no such cases during the reporting period.



In addition to reviewing and reporting on environmental issues, I provide public education about the *Environmental Bill of Rights*. To promote maximum public awareness, my staff and I visited communities throughout Ontario and met with as many groups as possible during the reporting period, including MPPs, municipal leaders, conservation authorities, environmental non-governmental organizations, librarians, health professionals, business leaders, industry groups, chambers of commerce, service clubs, environmental trade organizations and labour representatives. We also worked with students and teachers in colleges, universities, high schools and youth groups. And to extend our reach, we set up displays at trade fairs, conferences, shopping malls and other public venues.

To support our education strategy, I established an Education and Communications Advisory Committee. This team of education and communications experts helped us develop and implement our educational programs. Their assistance and advice were invaluable.

To provide Registry access for the public in under-served or high-demand communities, my office loaned computers to groups such as CleanNorth, the Sault and District Recycling Association, the St. Lawrence River Institute, the Carlingwood branch of the Ottawa Public Library Board, the Canadian Environmental Law Association, and the Canadian University Students' Environmental Network at Queen's University, as well as to five community information centres.

The Ministry of Environment and Energy complemented our education efforts by distributing information about the *Environmental Bill of Rights*. And working together with the Ontario Environment Network (OEN), the Ministry provided outreach to environmental groups around the province. My staff worked closely with the OEN's Environmental Registry Coordinator, Cathy Taylor, to provide information to non-government organizations. With financial support from the Ministry of Environment and Energy, Ms. Taylor helped large numbers of people across Ontario access the Environmental Registry, greatly supporting the public participation goals of the *Environmental Bill of Rights*.

Meanwhile, the Ministry of Culture, Tourism and Recreation highlighted the Environmental Registry during Ontario Public Library Week 1994, and my staff and I participated in a number of Registry launches around the province.

My staff also produced a variety of publications during the reporting period, including *EBRights*, our quarterly newsletter, Ontario's *Environmental Bill of Rights* and You, a citizen's guide to the legislation, a presenter's resource kit, and a series of fact sheets. We also established a public Resource Centre — home to a comprehensive collection of environmental resource materials and services to help the public learn about their new environmental rights and how to participate.

Additional educational highlights included a visit by Dr. Helen Hughes, New Zealand's Parliamentary Commissioner for the Environment; an information-sharing forum featuring delegates from Fundacion Ambio, a Costa Rica-based environmental regulation research organization; an educational session for Legislative Assembly personnel; two multistakeholder round tables on the *Environmental Bill of Rights*; and a presentation by Doug Miller, President of Synergistics Consulting.

MINISTRY STAFF TRAINING

In its Statement of Environmental Values, the Management Board Secretariat states: "In partnership, MBS and the Ministry of Environment and Energy will provide advice and assistance to prescribed ministries in the development and delivery of their training on the *EBR*."

So far, MBS has fallen short of its commitment. On the other hand, MOEE provided general information to staff in other ministries in 1994 and a total of 143 staff in other ministries received *EBR* training during the reporting period.

To complement that work, in June 1995 my office hosted a one-day conference on the *Environmental Bill of Rights* for the prescribed ministries. Staff from each ministry attended — more than 100 in total. The meeting focused on the Statements of Environmental Values, training issues, defining environmental significance, the role of public consultation, and processes for tracking, evaluating, monitoring and ensuring compliance.

By the end of 1995, most ministries had completed some staff training on the *EBR*, but content and scope varied from ministry to ministry. The special efforts of MCCR, MOEE, MMA, MNR and MTO deserve particular acknowledgement.

RECOMMENDATION:

1. All ministries increase their efforts to publicize the *Environmental Bill of Rights*, and particularly the Environmental Registry, to their staff and stakeholders.

Office of the
Provincial Auditor
of Ontario



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Auditor's Report

To the Environmental Commissioner

I have audited the statement of expenditure of the Office of the Environmental Commissioner for the period from the commencement of operations on May 30, 1994 to March 31, 1995. This financial statement is the responsibility of that Office. My responsibility is to express an opinion on this financial statement based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, this financial statement presents fairly, in all material respects, the expenditures of the Office of the Environmental Commissioner for the period from the commencement of operations on May 30, 1994 to March 31, 1995, in accordance with the accounting policies described in note 2 to the financial statement.

Toronto, Ontario
September 29, 1995

A handwritten signature in blue ink that reads "K.W. Leishman".

K.W. Leishman, CA
Assistant Provincial Auditor


Statement of Expenditure

For the Period from the Commencement of Operations on May 30, 1994 to March 31, 1995

	1995(\$)
Salaries and wages	336,123
Employee benefits (Note 4)	30,722
Transportation and communication	24,951
Services	603,646
Supplies and Equipment	<u>375,174</u>
	<u><u>1,370,616</u></u>

See accompanying notes to financial statement.

Approved:



Eva Ligeti

Environmental Commissioner

Notes to Financial Statement

March 31, 1995

1. BACKGROUND

The Environmental Commissioner, an independent officer of the Legislative Assembly of Ontario, promotes the values, goals and purposes of the *Environmental Bill of Rights, 1993 (EBR)* to improve the quality of Ontario's natural environment. The Office of the Environmental Commissioner monitors and reports on the application of the *EBR*, participation in the *EBR*, and reviews government accountability for environmental decision making.

2. SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of Accounting

The Office uses a modified cash basis of accounting which allows an additional 30 days to pay for expenditures incurred during the period just ended.

(b) Capital Assets

As is currently generally accepted for not-for-profit public sector entities, capital assets are charged to expenditure in the year of acquisition.

3. EXPENDITURE

Expenditure is paid out of monies appropriated by the Legislature of the Province of Ontario.

Certain administrative services are provided by the Office of the Assembly without charge.

4. PENSION PLAN

The Office of the Environmental Commissioner provides pension benefits for its permanent employees (and to non-permanent employees who elect to participate) through participation in the Ontario Public Service Pension Plan (PSPF) established by the Province of Ontario.

The *Ontario Public Service Employees' Union Pension Act, 1994* provides for a reduction of the employer's contributions to the PSPF for each of the three fiscal years ending 1995-1997. For the current fiscal year, the impact of these reductions on the Office's pension expense was a reduction of \$16,509.

The Office's share of contributions to the Fund during the period was \$3,362 and is included in employee benefits in the Statement of Expenditure.

This Glossary includes words that are defined according to their meaning in the *Environmental Bill of Rights* and as they are used in this Annual Report.

Act

A law passed by the Ontario Legislature.

aggregate

Gravel, sand, clay, earth, shale, stone and rock.

appeal body

A board or tribunal to whom an appeal or application for leave to appeal is referred. For example, the Ministry of Environment and Energy's appeal body is the Environmental Appeal Board.

Application for Investigation

An EBR process that allows two Ontario residents to ask a ministry to investigate if they think someone is contravening a prescribed environmentally significant Act, regulation or instrument.

Application for Review

An EBR process that allows two Ontario residents to ask a minister to review existing policies, Acts, regulations, or instruments if they think the environment is not being protected; or to establish new policies, Acts or regulations to protect the environment.

aquifer

An underground water-bearing geological formation that is capable of transmitting water in sufficient quantities to serve as a groundwater supply.

Certificate of Approval

A permit issued by a ministry under a specific provision in an Act or regulation that allows the discharge of a limited volume of polluting substances, according to the terms and conditions set out in the permit.

conservation authority

An authority established under the *Conservation Authorities Act* to further the conservation, restoration, development and management of natural resources such as rivers, streams and public lands, within an area over which the authority is granted jurisdiction.

decision

A course of action resulting from the use of discretion by a prescribed Ontario government ministry.

EBR

See *Environmental Bill of Rights*.

ecological system

A community of interdependent plants and animals together with the environment that they inhabit and with which they interact.

ecosystem

See ecological system.

environment

The air, land, water, plant life, animal life and ecological systems of Ontario.

environmental assessment

An analysis, report or body of evidence relating to a specific project or development that includes a description of the expected environmental impacts of the project, actions that could prevent or mitigate these environmental impacts, and alternative ways to carry out the project. NOTE: The term “environmental assessment” has a more specific meaning in legislation such as the *Environmental Assessment Act*.

Environmental Assessment Act

A statute of Ontario, R.S.O. 1990, c. E.18.

Environmental Bill of Rights (EBR)

A statute of Ontario, S.O. 1993, c. 28, proclaimed in Ontario in February 1994, which recognizes that the Ontario government has the primary responsibility for protecting, conserving and restoring the natural environment, but also recognizes that the people of Ontario have the right to participate in government decision making and to hold the government accountable for those decisions. The *EBR* provides a number of new ways for the citizens of Ontario to participate in environmental decision making.

environmental decision making

The process by which decisions having a significant effect on the environment are made within Ontario government ministries subject to the *EBR*. See environmentally significant.

Environmental Management System (EMS)

Part of the overall management system of an organization which sets out practices and procedures to develop and implement the environmental policies, objectives and targets of the organization.

Environmental Registry

A computerized bulletin board established by the *EBR* to provide information about the environment to the public in English and French. This information includes the text of the *EBR*; general *EBR* information; the ministries' Statements of Environmental Values; summaries of proposed policies, Acts, regulations and instruments; notices of appeals of instruments and appeal decisions; notices of court actions and final results; and Application forms for Reviews and Investigations.

environmental significance

See environmentally significant.

environmentally significant

The description of types of government decisions which are subject to the requirements of the *EBR*. Factors to be considered in determining environmental significance include the measures required to prevent environmental harm, the geographic extent of environmental harm, and the public and private interests involved. Environmental significance is determined by looking at the potential effects of a proposal on the sustainable use of resources, the protection and conservation of biodiversity, pollution prevention and healthy communities.

groundwater

Water that exists beneath the earth's surface, flows through geological formations such as sand layers, porous rock layers or fractured rock layers, and feeds wells.

hazardous waste

Waste that is harmful to health or to the environment because of its physical characteristics, quantity or concentration; can be either toxic, corrosive, ignitable, reactive or infectious.

household hazardous waste

Household hazardous waste is hazardous waste from homes, hotels, campgrounds, etc., and can include old batteries, paint cans, solvents, pesticides, old lubricating oil, polish, bleach, etc.

Interministerial Committee (IMC)

A group consisting of staff responsible for administering the *EBR* in all *EBR*-prescribed ministries.

instrument

Any document of legal effect issued under an Act, including a permit, licence, approval, authorization, direction or order.

instrument classification

The *EBR* requires certain ministries to prepare a regulation to classify proposals for instruments as Class I, II or III proposals according to their level of environmental significance, public notice and participation requirements, and the potential for public hearings to be held.

instrument holder

The individual or business that has obtained an instrument.

land use planning

Includes identifying problems, defining objectives, collecting information, analyzing alternatives, and determining a course of action for the use(s) of land within a geographical area.

leachate

Liquid that percolates through landfill waste and contains contaminants leached from such waste.

leachate plume

An underground leak of leachate from a landfill site into soil and groundwater.

leave to appeal

The process under the *EBR* of requesting permission from an appeal body to appeal a ministry decision to grant an instrument.

Planning Act

A statute of Ontario, R.S.O. 1990, c. P.13, as amended. During the period covered by this Annual Report, the *Planning Act* was amended significantly by Bill 163, which received Royal Assent on December 8, 1994. The *Act* was significantly amended again, by Bill 20, which received Royal Assent on April 1, 1996.

policy

A program, plan or objective and includes guidelines or criteria used in making decisions about the issuance, amendment or revocation of instruments.

prescribed (ministries, Acts, regulations or instruments)

The various ministries, Acts, regulations or instruments that are specified in the regulations made under the *EBR* and to which the provisions of the *EBR* apply.

public resource

Air, public, navigable waters, unimproved public land, public land used for recreation, conservation, resource extraction or management, and the plant and animal life and/or ecosystems associated with air, public land or public water.

regulation

A legislative regulation, rule or order made or approved under an Act and having the force of law when in effect.

regulatory impact statement

A statement that may be prepared by a ministry to permit more informed public consultation on a proposed regulation. It includes a statement of the objectives of the proposal; a preliminary assessment of the environmental, social and economic consequences of implementing the proposal; and an explanation of why the environmental objectives of the proposal would be achieved by making, amending or revoking a regulation.

reporting period

The period of time — December 14, 1993 to December 31, 1995 — that the Environmental Commissioner's first Annual Report is required by law to cover.

Statement of Environmental Values (SEV)

A statement, required by the *EBR*, that explains how the purposes of the *EBR* are to be applied when environmentally significant decisions are made in the ministry and how consideration of the purposes of the *EBR* should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision making in the ministry.

sludge

Any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant or air pollution control facility. Also referred to as bio-solid or processed organic waste.

sustainability

The concept that economic development must take full account of the environmental consequences of economic activity. Sustainability of the environment is achieved through the use of resources that can be replaced or renewed and therefore are not depleted.

Task Force on the Environmental Bill of Rights

A task force established in 1991 by the Ontario Minister of the Environment to make recommendations about the purpose and content of an *Environmental Bill of Rights*. It was made up of representatives from the business community, environmental groups and the Ontario government. The Task Force came to a unanimous consensus on the content of the *Environmental Bill of Rights*.

third party

A person who is not a part of the original decision about a classified instrument, but who may have a right or an interest in the decision.

watershed

An area of land that drains into a river and its tributaries.

watershed groundwater management

The management of groundwater resources on the basis of watershed boundaries rather than municipal or other jurisdictional boundaries.





Environmental Commissioner of Ontario

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Publications

Environmental
Commissioner
of Ontario



Annual Report 1996

Keep The Doors Open To
Better Environmental Decision Making

Environmental
Commissioner
of Ontario



Commissaire à
l'environnement
de l'Ontario

Eva B. Ligeti
LL.B., LL.M.
Commissioner

Eva B. Ligeti
LL.B., LL.M.
Commissaire

April 1997

The Honourable Chris Stockwell
Speaker of the Legislative Assembly
Room 180, Legislative Building
Legislative Assembly
Province of Ontario
Queen's Park

Dear Mr. Speaker:

In accordance with section 58 of the *Environmental Bill of Rights*, 1993, I am pleased to present the 1996 annual report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

Sincerely,

Eva Ligeti
Environmental Commissioner of Ontario



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A Message From The Environmental Commissioner of Ontario

The right to a healthy environment is critical. We are fortunate that this right is entrenched in Ontario's *Environmental Bill of Rights*.

The *Environmental Bill of Rights* makes the government responsible for protecting and conserving a healthy environment. As residents of this province, we all have the right and the responsibility to make sure that happens.

The *Environmental Bill of Rights* also establishes an Environmental Commissioner to provide an independent, impartial review of environmental decision making by provincial ministries. This helps Ontarians find out about, and evaluate how ministries meet their responsibility to protect the environment.

Throughout 1996, the ministries demonstrated an alarming lack of environmental vision. They failed to put their stated environmental values into action. Instead, their activities were characterized by omnibus-style legislation, cuts to environmental programs and the shift of environmental responsibilities to municipalities and the private sector.

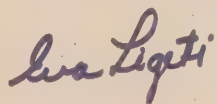
Much of this was done without fully assessing the potential environmental effects and without enough public participation. There was very little commitment to environmental monitoring and reporting, or to maintaining and increasing enforcement of environmental standards. I saw no commitment to providing assistance and supervision to municipalities, and to private sector and other organizations that now find themselves more responsible for delivering environmental protection. Without these commitments, Ontario will fall behind as a leader in environmental protection. And if we continue along this path, our right to a healthy environment will be jeopardized.

I encourage the ministries to add a new goal to their current restructuring efforts – stronger environmental protection. This requires a commitment from the ministries to allocate the staff and financial resources to put their stated environmental values into action. It also means keeping the door to environmental decision making open by providing the public participation opportunities required by the *Environmental Bill of Rights*.

In 1996, the *Environmental Bill of Rights* improved environmental decisions when ministries used it to solicit comments from Ontarians and to avoid environmental problems. You will find stories throughout this report where the public participation opportunities provided by the *Environmental Bill of Rights* led directly to better environmental protection.

The *Environmental Bill of Rights* encourages understanding of responsible environmental management. It promotes open dialogue and interaction among ministries, industry, environmentalists, citizen groups and employees to find the best environmental solutions.

We need to work toward these solutions with creativity and flexibility. We cannot afford to focus on short-term savings at the expense of long-term environmental health.



Eva Ligeti
Environmental Commissioner of Ontario



*Ontario's Environmental Bill of Rights
opens the door to environmental
decision making.*

Executive Summary

Introduction

Ontario's *Environmental Bill of Rights* opens the door to environmental decision making. It calls for the five-year appointment of an Environmental Commissioner who reviews and reports annually on how ministries comply with the law.

This is my second annual report as Environmental Commissioner. It covers the period from January 1, 1996 to December 31, 1996.

The Environmental Registry

The Environmental Registry is a computer bulletin board that gives people information about environmentally significant proposals and decisions, appeals, court actions and other things related to ministry environmental decision making.

Registry user accounts rose steadily – about 200 every month. Total log-ons topped 11,000.

The Ministry of Environment and Energy's *Environmental Bill of Rights* Office (EBRO) announced a two-stage upgrade to the Registry. First, the Ministry of Environment and Energy started including an Internet address on some proposal notices, allowing users to download information. Second, the Registry will go on an Internet Web site in 1997, improving access and making it easier to post proposals.

I commend the Ministry of Environment and Energy for addressing some of the technical and administrative recommendations I made in my 1994-1995 annual report.

The Environmental Registry has now been tested and proven as a cost-effective way to open the door to government environmental decision making – if the ministries use it properly.

Ministry Environmental Decisions

Perhaps the most significant decisions made in 1996 were those that reduced the ministries' responsibility to protect the environment. The extent and pace of change were daunting. Given the enormous implications of many of these decisions, it is disturbing that many were made with a minimum amount of required public consultation.

Cutbacks Reduce Environmental Protection

I reviewed some specific programs where cost cutting increased the risk of compromising environmental protection – drinking water testing, Ontario's acid rain program, and the inspection of pits and quarries.

For years, the Ministry of Environment and Energy and the Ministry of Health provided drinking water testing to municipalities. With little notice, these services were transferred to municipalities that had to find testing labs and the money to pay for them. The public was not consulted. Nor were municipalities.

The government relied only on promises from private sector labs that they could handle the new workload and did no independent review of how much it would cost municipalities. Worse still, the Ministry of Environment and Energy did not assess how this shift affected the quality of drinking water testing.

Despite substantial improvements over the years, acid rain is



still damaging lakes and forests. Evidence shows that current sulphur dioxide emission levels are harmful to Ontario's more sensitive lakes.

Even though we need to do more, the Ministry of Environment and Energy continued to cut Ontario's acid rain program in 1996. Among other things, the Ministry will no longer monitor the recovery of acidified lakes in the Sudbury area.

We need to keep monitoring and researching acid rain. Otherwise, we won't know how much damage persists, or what we need to do to fully protect our lakes and forests.

The *Aggregate and Petroleum Resources Statute Law Amendment Act* changed the way the Ministry of Natural Resources regulates the aggregate industry. Now, all licensed pits and quarries operators will monitor their own environmental compliance.

This move to self monitoring was motivated by saving money, not by better environmental protection.

Review Of Selected Decisions

Ministry of Consumer and Commercial Relations

The *Safety and Consumer Statutes Administration Act* creates the Technical Standards and Safety Authority (TSSA), an industry-run, self-funded organization. The Ministry will hand over its authority to the TSSA to inspect and regulate underground fuel storage tanks. The Ministry did not indicate how compliance with standards will be ensured.

Ministry of Environment and Energy

The Ministry allowed the *Intervenor Funding Project Act* to expire. There was no opportunity for the public to comment on this decision, which reduces the ability of Ontarians to comment meaningfully on large environmental projects.

The *Environmental Assessment and Consultation Improvement Act* gives the Minister more discretion when deciding how much research must be done to prepare an Environmental Assessment. It represents the most sweeping reform of the *Environmental Assessment Act* since that Act was passed in 1975. Public consultation on this Act was inadequate. The Ministry should have published a detailed, objective analysis of the proposed changes and options.

A proposed amendment to a regulation under the *Niagara Escarpment Planning and Development Act* would have exempted Niagara Escarpment pits and quarry operators licensed before 1975 from having to get development permits for future activities. After the public commented, the Ministry changed the amendment to require a development permit for any activity involving water taking and the construction of new buildings.

The Ministry of Environment and Energy was the most consistently proactive in opening the door to its environmental decision-making processes. However, **Responsive Environmental Protection**, the Ministry's public consultation paper on regulatory reform, showed that a sweeping review of every Ministry environmental regulation is happening too quickly and is too narrowly focused.

Ministry of Municipal Affairs and Housing

The Ministry removed the requirements for full-height basement insulation from the Ontario Building Code. If insulation levels in new houses are reduced, more fuel will be burned for heating. Taking energy efficiency provisions out of the Code is inconsistent with the government's role in promoting energy conservation and improving air quality.

Ministry of Natural Resources

The Ministry restructured its core business in its May 1996 Business Plan and sector-specific business plans. These plans include a reduction in planning, operations, research, monitoring and enforcement activities in every resource sector.

The maintenance of Ontario's forests will now depend more heavily on the actions of the forest industry.

One of the Ministry's most high-profile decisions was about how land will be used in Temagami in Northern Ontario. Among other things, the Ministry will allow mining and logging in headwater areas of Lady Evelyn Lake. This decision allows logging in the area for the first time in 24 years, along with logging in more than one-third of the area's old-growth pine forests.

Ministry of Northern Development and Mines

The *Mining Act* now allows the Ministry to establish a self-certification system for mine closure and remediation. The Ministry said it will ensure compliance with mine closure standards through spot checks. This is questionable since the Ministry reduced its mine closure and rehabilitation staff from 18 to five.

Decisions Not Posted On The Registry

During the reporting period, many environmentally significant decisions were not posted on the Environmental Registry. This closed the door to environmental decision making.

Process Must Be Effective, Timely, Open And Fair
Regulatory reviews must be done with great care. If done too quickly, meaningful public input is impossible. And there is a risk of losing laws, regulations and policies that we need to protect the environment. There is no question that the effectiveness, efficiency and fairness of the regulation and policy-making process in Ontario can be improved. However, protecting public health, safety and the environment must be one of the goals.

Reviews And Investigations

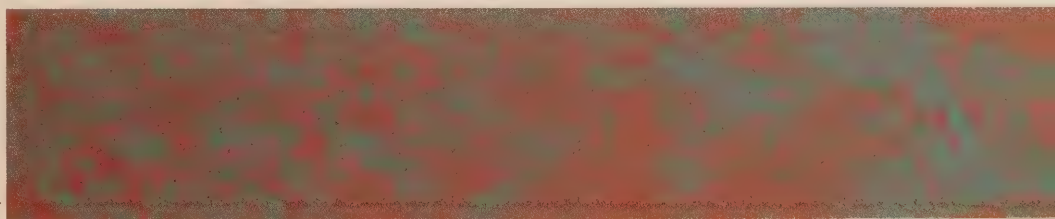
I received 13 Applications for Review and 17 Applications for Investigation during this reporting period. Many were well organized and backed by solid evidence.

Applications covered issues like resource management, air emissions, landfill management, mine closings and the need for intervenor funding.

The Ministry of Environment and Energy and the Ministry of Natural Resources denied several Applications that raised important public policy issues.

Update On Groundwater And Refillables

In its 1996 Business Plan, the Ministry of Environment and



Energy committed to developing a plan to protect Ontario's groundwater. I urge the government to make the development of a sustainable strategy for restoring, protecting and conserving groundwater a priority.

My research in 1996 showed that refillable beverage containers work. Plastic refillables are successfully used in Europe and South America. Deposit-refund systems should also be explored as a solution to waste management problems.

Instruments

Ministries must classify instruments based on how environmentally significant they are.

The Ministry of Natural Resources did not draft its instrument classification proposal during the reporting period. This denied Ontarians the right to comment on, appeal or apply for Reviews and Investigations of instruments issued by the Ministry.

The Ministry of Environment and Energy was the only ministry that had classified its instruments by 1996, and therefore was the only ministry that gave people the opportunity to comment on instruments. In some cases, public input helped improve the final instrument. In others, it led to the denial of instruments that did not adequately protect the environment.

I looked into concerns that the posting requirement added as many as 45 days to the instrument approval process. My review showed that approvals that have to be posted on the Environmental Registry were not delayed longer than approvals in general.

The *Environmental Approvals Improvement Act* proposes that approvals be "deemed" to exist if certain conditions are met. That means the Ministry of Environment and Energy would be less involved in the approvals process and the public would have fewer opportunities to comment.

Other New Legal Rights

During 1996, the appeal process applied to the Ministry of Environment and Energy only. At December 31, 1995, 11 applications for leave to appeal were pending before the Environmental Appeal Board: five were granted (all related to a decision on approvals for Petro-Canada Products in Mississauga); five were denied; and one was withdrawn.

Seven new applications for leave to appeal were made in 1996. One was granted, four were denied and two were withdrawn.

In the Petro-Canada appeal, the parties reached a settlement in which the company agreed to reduce sulphur dioxide

emissions from its Mississauga refinery. This appeal demonstrates that the rights created by the *Environmental Bill of Rights* are usable, practical and improve environmental protection. Communities that felt powerless in the past should take note of this case.

Statements of Environmental Values

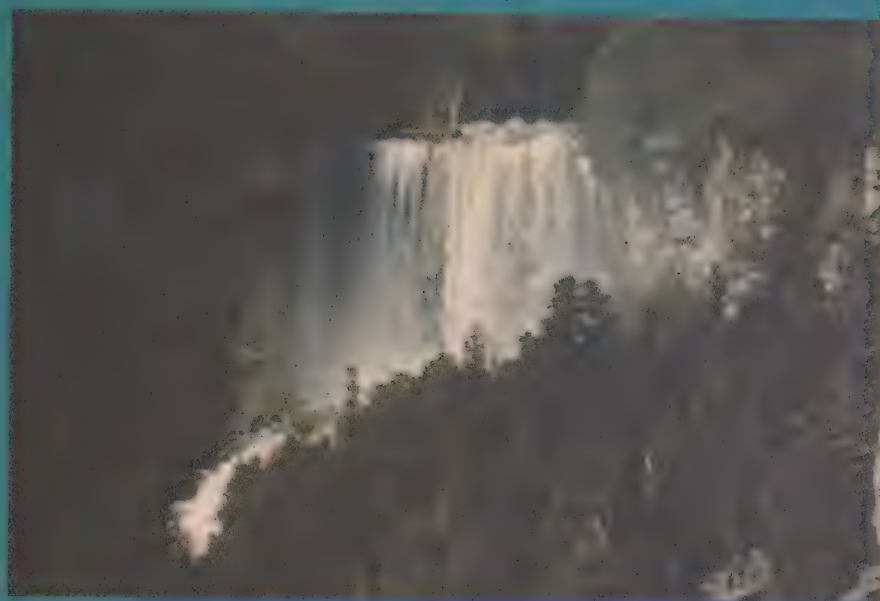
Last year I recommended that the ministries define environmental protection and sustainability goals and objectives for their daily operations either in their Statements of Environmental Values or in separate but complementary documents.

During this reporting period, I reviewed in detail how five ministries in particular considered their stated environmental values in developing their 1996 Business Plans. I found that these ministries failed to integrate environmental considerations into those Plans.

Education Initiatives

The number of requests for information and presentations during this reporting period makes it clear that Ontarians want to know about the *Environmental Bill of Rights* and their rights to take part in environmental decision making. My discussions with people across the province continue to confirm that Ontarians are interested in, and concerned about the protection, conservation and restoration of the natural environment, and want to know how they can get involved.

The Ministry of Environment and Energy's funding for the Ontario Environment Network's Environmental Registry Coordinator position ended, leaving an educational gap. The ministries of Environment and Energy, Consumer and Commercial Relations, and Transportation made some progress toward educating their staff and stakeholders about the *Environment Bill of Rights*.



Part 1

*Ontario's Environmental Bill of Rights
helps Ontarians make sure the
government is accountable for the
decisions it makes.*

Part 1:

The *Environmental Bill of Rights* And The Environmental Commissioner of Ontario

The *Environmental Bill of Rights*

Ontario's *Environmental Bill of Rights* opens the door to environmental decision making. It helps Ontarians make sure the government is accountable for the decisions it makes.

Preamble

- The people of Ontario recognize the inherent value of the natural environment.
- The people of Ontario have a right to a healthful environment.
- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.
- While government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.

Purposes

- Protect, conserve and restore the integrity of the environment.
- Provide sustainability.
- Protect the right of Ontario residents to a healthful environment.
- Prevent, reduce and eliminate the use, generation and release of pollutants that unreasonably threaten the integrity of the environment.
- Protect and conserve biological, ecological and genetic diversity.
- Protect and conserve natural resources, including plant life, animal life and ecological systems.
- Encourage the wise management of our natural resources, including plant life, animal life and ecological systems.
- Identify, protect and conserve ecologically sensitive areas or processes.
- Provide ways for Ontario residents to participate in environmental decision making.
- Increase government accountability for its environmental decision making.
- Increase access to the courts for Ontario residents who want to protect the environment.
- Improve protection for employees who take action against their employers for harming the environment.



- Agriculture, Food and Rural Affairs
- Citizenship, Culture and Recreation*
- Consumer and Commercial Relations
- Economic Development, Trade and Tourism*
- Environment and Energy
- Health
- Labour
- Management Board Secretariat
- Municipal Affairs and Housing*
- Natural Resources
- Northern Development and Mines
- Transportation

*On September 27, 1995, the Ontario government tabled Bill 1. If passed, it will result in the following reconfiguration of the ministerial portfolios of three ministries under the *Environmental Bill of Rights*: the Ministry of Municipal Affairs and Housing, the Ministry of Citizenship, Culture and Recreation and the Ministry of Economic Development, Trade and Tourism. This report uses the proposed names of the reconfigured ministries.

Public Rights To Participate

The *Environmental Bill of Rights* gives Ontarians the right to:

- Get notice of, and comment on, proposed policies, Acts, regulations and instruments that may affect the environment.
- Access the Environmental Registry.
- Appeal certain ministry decisions.

- Ask a minister to change or eliminate existing environmental policies, Acts, regulations and instruments.
- Ask a minister to investigate contraventions of environmental Acts, regulations and instruments.
- Sue someone for harming a public resource.
- Sue for personal damages if an environmentally harmful public nuisance causes direct economic or personal loss.
- Whistleblower protection.

The Environmental Commissioner of Ontario

The *Environmental Bill of Rights* calls for the five-year appointment of an Environmental Commissioner of Ontario (ECO).

Mandate

- Review implementation of the *Environmental Bill of Rights*.
- Review ministries' compliance with the *Environmental Bill of Rights*.
- Give guidance to ministries in complying with the *Environmental Bill of Rights*.
- Assist ministries to provide educational programs about the *Environmental Bill of Rights*.

- Deliver public education programs about the *Environmental Bill of Rights*.
- Advise and assist people who want to participate in the *Environmental Bill of Rights* decision-making processes.
- Review use of the Environmental Registry.
- Review ministerial decisions to exempt proposals from posting on the Environmental Registry.
- Review the use of appeals and court actions by the public.
- Review the way ministries process Applications for Review and Investigation.
- Review the use of whistleblower protection rights.
- Report annually to the Legislative Assembly of Ontario.
- Present special reports to the Legislative Assembly of Ontario.



Part 2

The Environmental Registry provides public access to environmentally significant proposals and decisions, appeals of instruments, court actions and other information related to government environmental decision making.

Part 2:

The Environmental Registry

What Is The Environmental Registry?

The Environmental Registry gives people access to environmentally significant proposals and decisions, appeals of instruments,

court actions and other information related to government environmental decision making. Ministries have to post environmentally significant proposals on the Registry so that the public can provide input on decisions – before they are made.

ENVIRONMENTAL REGISTRY STATISTICS JANUARY 1, 1996 - DECEMBER 31, 1996

January

Log-ons	1,221
New User IDs	250
Information Downloads	8,727

February

Log-ons	1,263
New User IDs	305
Information Downloads	9,676

March

Log-ons	902
New User IDs	182
Information Downloads	5,096

April

Log-ons	953
New User IDs	154
Information Downloads	6,921

May

Log-ons	803
New User IDs	144
Information Downloads	9,254

June

Log-ons	867
New User IDs	142
Information Downloads	7,990

July

Log-ons	1,062
New User IDs	195
Information Downloads	8,524

August

Log-ons	749
New User IDs	151
Information Downloads	5,607

September

Log-ons	778
New User IDs	158
Information Downloads	4,559

October

Log-ons	1,115
New User IDs	251
Information Downloads	5,229

November

Log-ons	1,178
New User IDs	180
Information Downloads	6,086

December

Log-ons	702
New User IDs	130
Information Downloads	7,325

Total Log-ons	11,593
Total New User IDs	2,242
Total Information Downloads	84,994

The Environmental Registry continues to grow as Ontarians' first point of access to the decision-making process. During this reporting period, new Registry user accounts rose steadily – about 200 every month. Total log-ons topped 11,000. And information downloads averaged around 7,000 a month.

Making The Registry More Effective

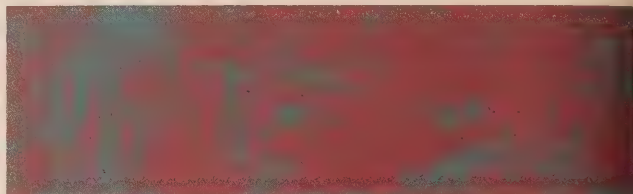
Few technical or administrative improvements were made to the Registry until late in the reporting period. Users pointed out fewer technical problems, but I still received complaints about spelling, French translation, incorrect information and poor search capabilities.

Last year, I recommended that a single authority operate the Registry and make it easier for people to use. In October 1996, the Ministry of Environment and Energy's *Environmental Bill of Rights* Office (EBRO) announced a two-stage upgrade. The first stage began in 1996 when the Ministry of Environment and Energy started including an Internet address for some proposal notices, allowing users to download the full text of proposals for some policies, Acts and regulations. In the second stage, the Registry will go on an Internet Web site where proposals will be linked to their full text. The site will have a direct dial-up feature for people who have a modem but no Internet access. This upgrade will improve Registry access and make it easier to post proposals.

A database of Registry information that users can search is planned too, and the technical and administrative functions of the Registry will both be handled by the EBRO. The EBRO will manage the information on the Registry for all ministries.

I commend the Ministry of Environment and Energy and the EBRO for addressing some of the technical and administrative recommendations I made in my 1994-1995 annual report. At the same time, it is still sometimes difficult for Ontarians who live far from Ministry offices to get the full text of proposals and decisions. It's even harder if they do not have Internet access. Ministries should develop and publish standard procedures for releasing the full text of proposals to the public and for enabling people who live far from ministry offices to stay informed.

The Environmental Registry has been tested, upgraded and proven as a cost-effective way to open the door to the government's environmental decision making process – if the ministries use it properly. It is time for ministries to maximize the public participation opportunities the Environmental Registry offers and keep the door open to environmental decision making in Ontario.



Recommendations

- 2.1 Ministries maximize the potential of the Environmental Registry to get public feedback by posting proposals early and often.
- 2.2 The Ministry of Environment and Energy continue to make technical and administrative improvements to the Environmental Registry.



Part 3

Perhaps the most significant decisions made in 1996 were those that reduced the ministries' responsibility to protect the environment.

Part 3:

Ministry Environmental Decisions

The following review shows the kinds of decisions ministries made in 1996, and whether they complied with the public participation and environmental protection requirements of the *Environmental Bill of Rights*.

Posting Proposals And Decisions On The Environmental Registry

In 1996, all 12 ministries were required to use the Environmental Registry for environmentally significant decisions. Five ministries did. They were:

- Consumer and Commercial Relations
- Environment and Energy
- Municipal Affairs and Housing
- Natural Resources
- Transportation

These ministries said they made no environmentally significant decisions in 1996 that required posting:

- Agriculture, Food and Rural Affairs
- Culture, Citizenship and Recreation
- Economic Development, Trade and Tourism
- Health
- Labour
- Management Board Secretariat
- Northern Development and Mines

The chart at the top of page 17 shows the number of proposals and decisions posted on the Environmental Registry, and the number of proposals undecided at the end of the reporting period.

Exceptions

Some environmentally significant proposals do not have to be posted on the Environmental Registry for public comment:

- if they are mostly financial or administrative
- if they give effect to a budget or economic statement
- if they are instruments that are part of projects approved or exempted under the *Environmental Assessment Act*
- in emergencies when the delay caused by the posting would put people, the environment or property in danger
- if equivalent public participation has already taken place*

*these decisions must be posted on the Environmental Registry as exception notices

In addition, Regulation 482/95 permanently exempted the Ministry of Finance from the *Environmental Bill of Rights*. It also exempted anything the other ministries did related to "realignment of government expenditures" from the public notice and comment requirements for 10 months, ending September 30, 1996.

The Ministry of Environment and Energy used this exemption sparingly. On the other hand, the Ministry of Natural Resources interpreted Regulation 482/95 as widely as possible. The ministries of Agriculture, Food and Rural Affairs, and Northern Development and Mines used the exemption too. As a result, proposals for new policies, Acts and regulations that I considered environmentally significant were not posted on the Registry for public comment.

<i>Ministry</i>	<i>Proposals undecided* at Dec. 31, 1995</i>	<i>Proposals posted in 1996</i>	<i>Decisions posted in 1996</i>	<i>Proposals undecided* at Dec. 31, 1996</i>
Policy Postings				
MOEE	13	12	12	13
MNR	6	13	2	17
MMAH	0	3	2	1
MTO	1	3	2	2
Act Postings				
MOEE	0	2	0	2
MNR	0	1	0	1
MMAH	1	1	1	1
Regulation Postings				
MOEE	21	17	20	18
MNR	n/a	4	1	3
MCCR	n/a	3	0	3

* Undecided means that no decision was posted

Restructuring Environmental Protection

Perhaps the most significant decisions made in 1996 were those that reduced the ministries' responsibility to protect the environment. Never before have Ontarians seen environmental laws and regulations changed so much or so quickly.

We need to review laws to make sure they still work. The *Environmental Bill of Rights* itself recognizes this by giving Ontarians the right to request a Review of environmental laws and policies.

However, little is gained when decisions are made too quickly, in a hasty, ad-hoc style, and without adequate public consultation. Good decisions are more likely to happen, and be more acceptable to Ontarians, when the process is effective, timely, open and fair.

Decisions To Cut Spending Reduce Environmental Protection

In April, the Ministry of Environment and Energy announced that 750 people would be laid off over the next two years – 400 were gone by the end of 1996. The Ministry of Natural Resources announced layoffs of 2,170 people over the next two

years – 900 were laid off in May alone. How will these reductions affect Ontario's environment? I reviewed some specific programs where cost cutting compromised environmental protection – drinking water testing, Ontario's acid rain program and the inspection of pits and quarries.

Cutting Back Drinking Water Testing

Drinking water must be rigorously tested to ensure contamination is found and fixed right away. Ontarians expect safe, reliable water to drink.

Ontario's drinking water treatment plants are usually owned and operated by municipalities. The Ministry of Environment and Energy issues waterworks approvals, including conditions on what kind of drinking water testing should be done. The Ministry inspects water treatment plants every two years to make sure they are complying with Ministry guidelines.

For years, the Ministry of Environment and Energy and the Ministry of Health provided drinking water testing services to municipalities. To save money, in 1996 the Ministry of Environment and Energy decided to stop its water testing service and the Ministry of Health followed suit. As a result, more than

continued on page 20

December 1995

Amending five MNR laws via Bill 26 (MNR)	Not posted on Registry**
Amending Municipal Act via Bill 26 (MMAH)	Not posted on Registry
Amending Mining Act via Bill 26 (MNDM)	Not posted on Registry
Marketing government land for development (MBS)	Not posted on Registry

January 1996

Provincial Policy Statement under Planning Act (MMAH)	60 days on Registry
Ontario Building Code Reform (MMAH)	34 days on Registry
Environmental Land Use Planning Reform (MOEE)	30 days on Registry
Temagami Land Use Plan (MNR)	30 days on Registry
Use of Biosolids on Agricultural Land (MOEE)	30 days on Registry

February 1996

Directive on Contaminated Property (MTO)	30 days on Registry
Tax Rebates for Managed Forests (MNR)	Not posted on Registry

March 1996

End of Intervenor Funding (MOEE)	Posted on Registry as information notice
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April 1996

Treatment Requirements for Combined Sewer Systems (MOEE)	45 days on Registry
Noise Assessment Criteria in Land Use Planning (MOEE)	30 days on Registry
Southwestern Ontario Transportation Perspective (MTO)	30 days on Registry
New governance for Serpent Mounds Park (MNR)	Not posted on Registry
Amending three MNR laws via Bill 36 (MNR)	Not posted on Registry
\$3-million grant for Cornwall Ethanol Plant (OMAFRA)	Not posted on Registry

May 1996

Increased size limit for fishing muskellunge (MNR)	30 days on Registry
Larder River Provincial Park Management Plan (MNR)	30 days on Registry
Business Plans (all ministries)	Not posted on Registry
Changes to Industrial Effluent Monitoring Regs (MOEE)	Not posted on Registry
Amendments to numerous Acts via Bill 46 (OMAFRA)	Not posted on Registry
Bill 52 governing aggregate and petroleum industries (MNR)	Not posted on Registry
Changes to Safety and Consumer Laws via Bill 54 (MCCR)	Not posted on Registry
Elimination of five Advisory Bodies (MNR)	Not posted on Registry
Ending Farm Pollution Advisory Committee (MOEE)	Not posted on Registry
Ending bacterial testing of tap water (MOH)	Not posted on Registry

June 1996

New Environmental Approvals via Bill 57 (MOEE)	87 days on Registry
Amending Environmental Assessment Act via Bill 76 (MOEE)	54 days on Registry
New Smog Plan for Ontario (MOEE)	75 days on Registry
New Landfill Standards (MOEE)	82 days on Registry

June 1996 (cont'd.)

Guideline for use at Contaminated Sites	Posted on Registry as exception
Instrument Classification under Gasoline Handling Act (MCCR)	45 days on Registry (1st posting)
Presqu'île Provincial Park Management Planning (MNR)	32 days on Registry
Forest Operations Prescription Guideline (MNR)	30 days on Registry
Unlicensed sale of animal parts (MNR)	Not posted on Registry
Creation of Massassauga Provincial Park (MNR)	Not posted on Registry
Eliminating Horticultural Inspectors (OMAFRA)	Not posted on Registry

July 1996

Lake Nipigon walleye/sauger sport fishing regulations (MNR)	30 days on Registry
Responsive Environmental Protection public consultation paper (MOEE)	76 days on Registry
Reopening of Mining Lands in Temagami (MNDM)	Not posted on Registry

August 1996

Changing Pesticide Regulations (MOEE)	38 days on Registry
Exemption for Niagara Escarpment pits and quarries (MOEE)	38 days on Registry

September 1996

Proposed changes to Game and Fish Act (MNR)	37 days on Registry
Amendment to North Bay District Land Use Guidelines (MNR)	30 days on Registry

October 1996

Three-Year Plan for Standard-Setting (MOEE)	60 days on Registry
Amendments to municipal legislation via Bill 86 (MMAH)	Not posted on Registry
Approval of Forest Management Planning Manual (MNR)	Posted on Registry as exception
New regulation under Public Lands Act (MNR)	Not posted on Registry
New regulation under Lakes and Rivers Improvement Act (MNR)	Not posted on Registry

November 1996

Two new standards under Gasoline Handling Act (MCCR)	30 days on Registry
Airport Policy Review (MMAH)	30 days on Registry
Changes to development charges legislation via Bill 98 (MMAH)	Not posted on Registry (Posted in 1997)
Amendment 101 to the Niagara Escarpment Plan (MOEE)	Posted on Registry as exception

December 1996

Classification of Instruments under Gasoline Handling Act (MCCR)	75 days on Registry (2nd posting)
Operational Constraint on Use of Furnace Slag (MTO)	45 days on Registry
Cochrane Remote (Wilderness) Tourism Strategy (MNR)	30 days on Registry
Prescribed Burn Planning Manual (MNR)	30 days on Registry
Wabikimi Provincial Park Expansion (MNR)	45 days on Registry
Mikisew Provincial Park Management Planning (MNR)	45 days on Registry
3 Regulations/1 Policy Implementing Bill 76 Amendments (MOEE)	30 days on Registry

**See Decisions Not Posted On The Registry chart for details of initiatives not posted on the Environmental Registry.

400,000 annual water quality tests were transferred to the private sector, and each municipality now has to pay for testing.

Ontarians Had No Say

This decision was not posted on the Environmental Registry for public comment by either ministry. The public was not consulted. Nor were municipalities.

Municipalities had barely eight weeks to find private labs. And while the Ministry of Health recommended municipalities choose certified or accredited labs – the law does not say they have to. It appears that the Ministry of Environment and Energy did not make this a legal requirement because of costs, and because such a requirement runs counter to the government's move to cut regulations.

The Ministry of Environment and Energy did no independent review of the cost of private sector testing. Many tests will cost more now – some say five times as much as doing them at ministry labs in some cases. Worse still, the Ministry of

Environment and Energy did not check if drinking water testing is now being done properly.

In 1996, the Provincial Auditor noted that, because of resource constraints, drinking water testing by hundreds of small treatment plants is not audited by the Ministry. This decision most likely increases the risk of inadequate drinking water testing in Ontario. When it comes to inspecting and testing the quality of our drinking water to ensure public health and safety, and environmental protection, the Ministry must take every precaution.

Dissolving Ontario's Acid Rain Program

Acid rain happens when moisture in the air mixes with pollutants, particularly sulphur and nitrogen oxides. It became a high-profile environmental issue in the 1970s when scientists discovered it was contributing to declining fish populations in south-central Ontario lakes.

In 1984, Canada's federal and provincial governments agreed to cap annual sulphur dioxide emissions at 2,300 kilotonnes in the seven eastern provinces by 1994. Ontario agreed to reduce its

emissions to 885 kilotonnes by the same year, and announced regulations to set specific limits for Ontario's four major acid gas emission sources in late 1985.

Acid Rain Still A Problem

Substantial improvements have been made, but acid rain continues to damage lakes and forests. The 1996 Canada-United States Air Quality Agreement Progress Report states that "acidifying emissions are still a serious problem for aquatic and terrestrial ecosystems and human health." Evidence also shows that current sulphur dioxide emission levels are harmful to Ontario's more sensitive lakes. Experts say further reductions are needed – some say as much as 75 per cent over and above currently planned reductions.

In addition, nitrogen oxide emissions (60 per cent of these emissions in Canada come from cars, trucks, trains, etc.) have not decreased. This is particularly worrisome in Ontario. Many of our most sensitive ecosystems get some of the highest levels of nitrate deposits in North America because they are close to high traffic areas.

The Need To Do More

Despite the need to do more, the government continues to erode its acid rain program. Since 1991, the Ministry of Environment and Energy's monitoring network dropped from 39 to 16 sites. There is more than 10 years' worth of unanalysed deposition data. Substantial cuts in 1996 resulted in decreased quality assurance procedures – compromising the completeness and integrity of data collected. As well, the Ministry decided to stop monitoring the recovery of acidified lakes in the Sudbury area, even though many consider that information to be critical to understanding how ecosystems recover from acidification.

Cuts to Ontario's acid rain program have reduced our ability to protect our lakes and forests and to contribute to the national and international fight against acid rain. A continued focus on acid rain is especially important given plans to deregulate power plants in the midwestern United States. This will likely increase coal burning and sulphur dioxide emissions and increase pollution in downwind regions like Ontario.

We need to allocate enough resources to keep monitoring and researching this problem. If we don't, we will have no way of knowing how much damage acid rain continues to cause, or what we need to do to fully protect our lakes and forests.

Self Monitoring For Ontario's Pits And Quarries

Sand, gravel and stone (aggregates) are taken from pits and quarries and used for construction and building roads. The Ministry of Natural Resources regulates aggregate operations on public and private lands.

The Ministry has issued about 2,700 licences to pits and quarries on private lands in Ontario. Of these, 1,000 are held by operators who belong to the Aggregate Producers Association of Ontario (APAO), 700 by municipalities and 1,000 by smaller,

non-APAO operators.

Passed in 1996, the *Aggregate and Petroleum Resources Statute Law Amendment Act* introduced many significant changes. The Ministry used to inspect all licensed pits and quarries each year and prepared four-year reviews with input from municipalities. Now, all licensed pits and quarries operators will monitor their own environmental compliance.

This move to self monitoring was motivated by saving money, not by better environmental protection. The focus on savings also led to a drop in Ministry Aggregate Resources Officers from 41 to 32 in 1996. The Ministry says self monitoring will free staff up to do more audits of "bad apples" and focus on compliance and enforcement.

PUBLIC INPUT IMPROVES DECISION ON NIAGARA ESCARPMENT PITS AND QUARRIES

The Ministry of Environment and Energy posted a proposal to amend Regulation 828 to the Niagara Escarpment Planning and Development Act. This amendment would have exempted Niagara Escarpment pits and quarry operators licensed before June 10, 1975 from having to get a development permit from the Niagara Escarpment Commission for future activities. In other words, the activities of those operators – about 40 pits and quarries, almost half of them in Halton Region – would not be reviewed for their environmental impact on the Niagara Escarpment.

The proposal notice acknowledged that the highest court in Ontario had ruled that development permits were required for certain types of operations – even though the aggregate extraction had been licensed since 1975. A quarry may have a licence to extract aggregate, but it still needs permits to take water and to do any development in the Niagara Escarpment area.

The Ministry received 249 comments on this posting. More than 200 of them, mostly from industry employees and their families, supported the original proposal.

Comments against the proposal came from organizations with large memberships, as well as those in a petition signed by hundreds of people.

The Ministry did not provide a contact name or phone number, the text of the proposed regulation was not available to the public for a week after the posting, and there was no Regulatory Impact Statement. The description of how the Ministry considered its Statement of Environmental Values (SEV) was vague. To its credit, the Ministry reposted the notice four times to update information to the public and considered public comments before it made its final decision.

The Final Decision

The proposed amendment was changed so that quarries must get a development permit to take water and discharge it into the environment, or to construct new buildings in the Niagara Escarpment Plan Area.

Together, high-quality public submissions and the Ministry's commitment to consider what the public had to say made this a better decision.

The Ministry should evaluate the effectiveness of the new self-monitoring system in achieving environmental protection and report annually on the results.

Poor Public Consultation

Public consultation on this decision was poor. The Ministry only consulted with the APAO. The Aggregate Strategy Task Force, whose members include the road builders association, municipalities and the Conservation Council of Ontario, first heard about it when the proposed Act was introduced in the Legislature.

The proposal was not posted on the Environmental Registry. And while legislative committee hearings were held, they are not a substitute for broad consultation through the Environmental Registry or for other consultation methods.

The Ministry's Business Plan suggests that the public and municipalities have a role in monitoring compliance. But Ontarians have no access to private property where pits and quarries are located, and municipalities have declining resources and no jurisdiction for enforcing compliance.

The Ministry committed to posting regulations under this new legislation on the Environmental Registry.

Review Of Selected Decisions

Ministry of Consumer and Commercial Relations

The Ministry of Consumer and Commercial Relations posted three proposals for regulations during the reporting period. However, the Ministry's most significant initiative, the *Safety and Consumer Statutes Administration Act*, was not posted.

The Decision: Safety and Consumer Statutes Administration Act

The *Safety and Consumer Statutes Administration Act* was passed in June 1996.

How The Decision Was Made:

This decision was not posted on the Environmental Registry. The Ministry said it was an administrative decision and not environmentally significant.

What The Decision Means:

This *Act* allows the Ministry of Consumer and Commercial Relations to delegate environmental monitoring, and health and safety inspections for underground fuel storage tanks to a industry-run, self-funded, not-for-profit organization – the Technical Standards and Safety Authority. The Ministry did not indicate how compliance with standards will be ensured.

Transferring the training, licensing, inspection and prosecution of those responsible for underground fuel storage to this new non-government organization is a significant environmental decision. There are hundreds of leaks and spills from gasoline storage tanks every year and they can have serious environmental effects including soil, drinking water and groundwater contamination. Leaks are hard and costly to find, contain and clean up.

I expressed my concern to the Ministry about how these changes could affect Ontarians' right to be notified of instruments issued under the *Gasoline Handling Act* through the Environmental Registry, their right to comment, and to request Reviews and Investigations. The Ministry said these rights will not be compromised. I will continue to review the impact of this law.

Ministry of Environment and Energy

The Ministry of Environment and Energy posted 31 proposals for new policies, Acts and regulations. To its credit, the Ministry posted most of the initiatives I considered environmentally significant. Still, the implications of certain decisions are troubling.

The Decision: Intervenor Funding Project Act

The Ministry of Environment and Energy let the *Intervenor Funding Project Act* expire. This law required proponents of large projects to provide up-front financial support to individuals or organizations to take part in environmental hearings about those projects.

How The Decision Was Made:

The Ministry provided no opportunity for the public to comment. The Ministry did its own review but refused to make it public.

What The Decision Means:

Eliminating intervenor funding reduces the ability of individuals and groups to take part in the environmental assessment process for large projects.

The Decision: The Environmental Assessment and Consultation Improvement Act

This Act amends the *Environmental Assessment Act*.

How The Decision Was Made:

This legislation was developed without enough public consultation. The Environmental Registry posting provided only 54 days for comment – not enough time for Ontarians to comment on such a complex initiative. There were legislative committee hearings, but most people cannot participate in those like they can through the *Environmental Bill of Rights* notice and comment provisions.

The Ministry should have published a detailed, objective analysis of the proposed changes and options, and provided expanded public consultation.

What The Decision Means:

This Act will significantly affect how Environmental Assessment is used as an environmental planning tool. The Ministry of Environment and Energy says it has these advantages:

- Harmonizes Ontario's environmental assessment requirements with the *Canadian Environmental Assessment Act*, eliminating regulatory overlap.
- Minister can focus hearings by the Environmental Assessment Board. For example, the Minister could define environmentally significant issues that must be addressed by the board and ensure that hearings are timely.
- Minister can reject an incomplete or an inadequate Environmental Assessment. Previously the Minister could only refer such Assessments to a potentially expensive and time-consuming hearing.

However, proponents can now avoid some of the key features of the previous *Environmental Assessment Act* – like providing

alternative ways to carry out projects – by carefully negotiating the terms of reference. The Ministry said that terms of reference for all proposed Environmental Assessments will be posted on the Environmental Registry for only 14 days.

The Minister will have more discretion when deciding how much research must be done to prepare an Environmental Assessment and whether a comprehensive study is required. As well, the Minister may limit issues for the Environmental Assessment Board's consideration, and impose deadlines for Board decisions.

The Decision: Guideline For Use At Contaminated Sites

This document gives advice and information about assessing the environmental condition of contaminated sites.

How The Decision Was Made:

Because the Ministry's Advisory Committee on Environmental Standards did extensive public consultation on the guideline in 1994, the Ministry did not post it on the Environmental Registry for public comment. This was an appropriate exception. The final posted guideline incorporated many of the Advisory Committee's recommendations.

However, the Canadian Petroleum Products Institute said the public consultation could have been better, and that all major stakeholders should have been at the table to draft the guidelines together.

What The Decision Means:

The guideline introduces several major policy changes, including offering property owners three approaches to restoring sites. It also reduces the Ministry's involvement in clean-ups.

The Ministry of Environment and Energy's Decision-Making Processes

Generally, the Ministry's processes for posting proposed policies, Acts and regulations, reviewing and considering public comments, and posting decisions were well designed.

The Ministry's regulatory reform initiative (see box on page 24) is an example of how to use the Environmental Registry properly. The Ministry first posted an information-only notice to let

The Ministry of Environment and Energy posted notice of **Responsive Environmental Protection**. This public consultation paper proposed changes to the 80 regulations covering every part of the Ministry's mandate. The Ministry said the goal was to create jobs, boost the economy, improve client service and reduce costs – all while maintaining high environmental protection standards.

The Ministry used the Environmental Registry to publicize this far-reaching initiative. The Ministry also held stakeholder meetings to discuss particularly controversial issues like waste reduction audits, marina pump-outs and transferring dust, noise and odor complaints to municipalities.

Staff Concerns Ignored

Relying partly on background materials prepared by the Ministry's staff, I reviewed 20 of the proposals covering a range of environmental issues. Much of the material prepared by Ministry staff contradicted the direction that the Ministry proposed publicly. The background material suggested options for strengthening environmental protection, but these were not made available for public consideration. For example:

- Staff said the regulation requiring sewage pump-out

stations at marinas was essential for protecting the environment. **Responsive Environmental Protection** proposed replacing the regulation with a voluntary code of practice.

- Staff said the regulation controlling the sulphur content of fuels in Metro Toronto is effective, fair and necessary. **Responsive Environmental Protection** described the regulation as obsolete and proposed to revoke it.
- Staff said an improved road salt regulation would help reduce environmental damage. Even though the regulation was already drafted, the Ministry did not include it in **Responsive Environmental Protection**.

Regulations only work if backed by adequate enforcement resources. There is no mention of the lack of enforcement resources problem raised by Ministry staff.

The Ministry should slow down and explore ways to strengthen environmental protection through its regulations. While the Ministry has agreed to post proposals for any new and amended regulations on the Environmental Registry, it is not clear if that alone will be enough of an opportunity to address longstanding concerns.

people know about it and the review process. The notice said any relevant comments would be incorporated.

A second Registry notice told Ontarians that **Responsive Environmental Protection**, the Ministry's consultation paper, was available. Although only a 46-day comment period was provided at first, the Ministry later extended it to 76 days. The Ministry says it will post individual proposal notices of changes to each regulation as they are developed.

Lack of time was a barrier to commenting on Ministry of Environment and Energy initiatives. For example, the

Environmental Approvals Improvement Act was first posted for 30-day comment period – not enough time to respond to this complex proposal. The Ministry extended this to 89 days, but that extension overlapped with the comment period for the Ministry's regulatory review proposal.

Similarly, the *Environmental Assessment and Consultation Improvement Act* was also posted on the Registry for a 30-day comment period. While the Ministry extended that to 54 days, this coincided with the beginning of legislative committee hearings on the *Act*, and also overlapped with the comment period for the Ministry's regulatory review proposal.

Proposal notices were usually understandable and jargon-free, but the adequacy of information varied. No notices for regulations contained a Regulatory Impact Statement. Most notices did not have one or more of the following critical pieces of information – a contact name, telephone, or fax number. However, proposal descriptions improved over the reporting period.

Decision notices were not always posted promptly. The Ministry took considerable time – sometimes almost a year – to post decisions on regulations. Where notices were posted, they usually described the effect of public comment.

Ministry of Municipal Affairs and Housing

A number of this Ministry's decisions did not integrate social, environmental, economic and scientific considerations – a fundamental *Environmental Bill of Rights* requirement.

The Decision: Land Use Planning and Protection Act

The *Land Use Planning and Protection Act* became law in May 1996. A new Provincial Policy Statement came into effect at the same time.

How The Decision Was Made

The *Act* and the Policy Statement were posted on the Environmental Registry for 60-day comment periods. There were legislative committee hearings on the *Act*.

What The Decision Means:

Following four years of public consultation, the previous government made some substantial changes to improve environmental protection in the planning process. It handed over important decision-making powers to municipalities, but required that municipal planning decisions “be consistent with” provincial policy statements. The *Act* changed this to “have regard to” provincial policy statements. Now municipalities have more discretion to choose their own direction rather than follow provincial policy.

The new Policy Statement reduces protection for, among other things, environmentally significant natural areas. Development in prime agricultural areas used to be prohibited, but the new Statement allows it if there are no other “reasonable alternatives.” Because the terms are vague and municipalities need

THREE-YEAR PLAN FOR STANDARD-SETTING

The Ministry of Environment and Energy's Proposed Three-Year Plan For Standard-Setting encouraged input on a draft list of substances for standards development over the next three years. The Ministry regularly develops and updates standards for contaminants in air, soil, groundwater, surface water, drinking water, sediment and biota.

The Ministry opened up this standard-setting process by providing a 60-day comment period, clearly explaining how standards are used, the role of risk assessment, and how Ontarians can take part in the development of specific standards, and promising regular updates on the Environmental Registry.

I commend the Ministry for opening the door to this process. At the same time, the Ministry will need to update thousands of certificates of approval if the new standards are to have any practical effect on emissions. The Ministry should make sure it keeps the door open to this process as well.

only “have regard to” it, there could be disputes about what is actually required by the new Policy Statement.

The Decision: Ontario Building Code Amendments

The Ministry established new principles to guide the reform of the Ontario Building Code.

How The Decision Was Made:

The Ministry posted the proposal on the Environmental Registry for a 34-day comment period and released a discussion paper to stakeholders and the public.

Based on new principles for the Building Code, the Ministry proposed some revisions to the Code – including removing some energy conservation measures. For example, there is a proposal to decrease the amount of insulation required in above-grade walls by 33 per cent. The Ministry is consulting on these changes and expects to finalize them in 1997.

What The Decision Means:

The Ministry relied on the new principles to remove some insulation requirements from the Code, and to propose removing a number of other energy efficiency requirements. If insulation levels in new houses are reduced, more fuel will be burned for heating. This will increase pollution and greenhouse gas emissions.

The Ministry says that removing energy efficiency provisions from the Code will cut construction costs and make new homes more affordable. Stakeholders say that in the long run higher fuel costs will outweigh any savings from reduced insulation.

Taking energy efficiency provisions out of the Building Code is at odds with the government's commitment to addressing air-quality problems, and its plan for reducing greenhouse gas emissions.

The Decision: The Better Local Government Act

The *Better Local Government Act* reforms municipal laws so that municipalities can deliver services at lower costs to taxpayers.

How The Decision Was Made:

This *Act* was developed without broad public consultation and was not posted on the Environmental Registry. While it was scrutinized by a legislative committee, the *Act's* environmental implications were not raised.

What The Decision Means:

Ontarians can no longer sue municipalities in public and private nuisance for damage to their property from municipal sewers.

The importance of those rights is demonstrated by a lawsuit launched in 1996 against the Town of Fort Frances. Twenty-three families are suing the town for more than \$1 million for damage to their homes caused by sewer back-ups.

The Ministry of Municipal Affairs and Housing's Decision-Making Processes

In some cases, the Ministry did not include enough description in its decision notices. For example, the decision notice on the Provincial Policy Statement did not say when the Statement

took effect, how it would be put in place, or where people could get a copy of the final text.

On the other hand, the Ministry provided an excellent description of its decision on Back to Basics, its Ontario Building Code consultation paper, including the text of the new principles, how they would be used to guide development of the 1997 Building Code, and how the public can take part in the next stage of amendments.

Ministry of Natural Resources

The Ministry of Natural Resources restructured its core business in 1996, including a reduction in planning, operations, research, monitoring and enforcement activities in every resource sector. The Ministry made these changes to forest management alone:

- Amended the *Crown Forest Sustainability Act*
- Approved the new Forest Management Planning Manual
- Approved the new Forest Compliance Strategy
- Cut its forest management budget and staff by about 50 per cent
- Announced major restructuring of forest management in its Forest Management Business Plan

In every resource sector, the Ministry transferred its responsibility for aspects of planning, operations, monitoring and research to industry and client groups. Industries like forest products and aggregates will now monitor and report on their own compliance with the law.

With budget and staff cuts announced in 1996, it is questionable whether the Ministry of Natural Resources will be able adequately audit and enforce the law. And deep cuts to scientific and technological research and development jeopardize essential long-term forestry research.

The Ministry frequently used exceptions rather than posting proposals on the Environmental Registry, and rarely provided other consultation initiatives. This lack of public participation opportunities – especially in a year of major legislative and policy change – thwarts the purposes of the *Environmental Access to Information Act*.

The Decision: Changes to the Public Lands Act, the Lakes and Rivers Improvement Act, the Conservation Authorities Act, and the Game and Fish Act

The *Savings and Restructuring Act* amended the *Public Lands Act*, the *Lakes and Rivers Improvement Act*, the *Conservation Authorities Act* and the *Game and Fish Act*.

How The Decision Was Made:

This decision was not posted on the Environmental Registry. There were public hearings on some parts of the amendments as part of the legislative committee hearings on the *Savings and Restructuring Act*.

What The Decision Means:

Amendments to the *Public Lands Act* and the *Lakes and Rivers Improvement Act* show the move away from government control over environmentally harmful activities through traditional approvals. The Ministry says the number of approvals required by private interests wanting to use public lands will be cut by 80 per cent – saving more than \$1 million. Under the old *Public Lands Act*, mining companies had to get the go-ahead from the Minister before they could move heavy equipment or blast and strip away soil and vegetation from public land. Now, approvals will only be required for some large projects.

The *Public Lands Act* requires the Ministry of Natural Resources to protect lakes, rivers and public lands – lands that make up about 85 per cent of all Ontario land, including most waterways. Removing the review and approval of permits by the Ministry threatens the ecological integrity of lands supposedly held in trust for all Ontarians.

The *Conservation Authorities Act* now allows municipalities to sell conservation lands and to abolish conservation authorities.

Amendments to the *Game and Fish Act* create a fund for managing and conserving fish, wildlife and their ecosystems. An advisory council established by these provisions represents the interests of anglers and hunters, but does not provide a clear way to hear the voices of Aboriginal people, environmentalists or the tourism industry.



The Decision: An Act to Amend Certain Acts Administered by the Minister of Natural Resources

This *Act* amends the *Crown Forest Sustainability Act*, the *Game and Fish Act* and the *Provincial Parks Act*.

How The Decision Was Made:

This *Act* was not posted on the Environmental Registry, nor was it open to any other public consultation.

What The Decision Means:

This decision affects the management of forests and parks, and the enforcement of environmental protection laws in them. The Minister has more discretion when it comes to making decisions about the privatization of forest and park management.

The Decision: Aggregate Resources and Petroleum Statute Law Amendment Act

The *Aggregate and Petroleum Resources Statute Law Amendment Act* changes the *Aggregate Resources Act*, the *Petroleum Resources Act*, the *Mining Act* and the *Ontario Energy Board Act*.

How The Decision Was Made:

The Ministry did not post this *Act* on the Environmental Registry. Certain organizations like the Aggregate Producers Association of Ontario were consulted, and there were legislative committee hearings.

What The Decision Means:

This *Act* shows how the Ministry is reducing its responsibility for environmental protection, without giving the public enough information to put the cumulative environmental effects together. For example, this *Act* alone makes these changes:

- Operators will now monitor themselves.
- The Aggregate Resources Trust will now be responsible for funding the rehabilitation of abandoned pits and quarries where the licence or permit has been revoked, aggregate management research, and payments to the Crown and municipalities. The Trust may lack the information once collected and analyzed by the Ministry to help identify problem pits.
- Site plan requirements for licences and permits were removed from the *Act* and will be set out in the regulations. This will make it easier to change such requirements. The regulations and the details for site plans have not been developed yet.
- The Ministry of Transportation can now issue aggregate extraction permits. Considering the Ministry of Transportation's interest in an inexpensive, plentiful supply of aggregate for road projects, the Ministry may be subject to a conflict of interest.

The Ministry committed to posting proposals for regulations related to this *Act* on the Environmental Registry.

The Decision: Forest Management Planning Manual

This Manual addresses the preparation of forest management plans, and monitoring and reporting requirements, and will be used by Ministry staff, the forest industry and local citizens' committees.

How The Decision Was Made:

This decision was posted as an exception to the public notification requirements of the *Environmental Bill of Rights* because the Ministry said it had done equivalent public participation.

Early drafts of the Manual involved significant stakeholder input, but were not subject to province wide public notice. And changes to the final version were made without additional public review. This proposal should have been posted on the Registry to provide province wide notice and to allow stakeholders to comment on changes made to earlier drafts.

The Ministry did not cooperate when I asked to see documentation of this decision-making process – documentation that the Ministry's own *Environmental Bill of Rights* Manual requires.

The Ministry will probably revise the Manual again to reflect major changes in policy direction and government priorities. The Ministry should comply with the public participation requirements of the *Environmental Bill of Rights* when it makes any changes.

The Ministry did incorporate consideration of its Statement of Environmental Values and provided detailed requirements for posting forest management plans in the Manual. The Ministry will post proposal and decision notices on the Environmental Registry for all forest management plans intended for April 1, 1997 implementation.

What The Decision Means

The Manual sets out new rules for forestry operations, including the process for preparing forest management plans consistently across the province, along with rigorous requirements for public participation, plan content, monitoring, reporting and evaluation of forestry operations.

A major improvement over previous forestry planning is the addition of criteria and indicators to address forest sustainability.

Decision: Forest Compliance Strategy

The Forest Compliance Strategy sets out the government's "compliance partnership" with industry to help transfer more responsibility for forest management planning, operations and monitoring to the forest industry. It describes how compliance with forestry laws and regulations will be achieved – through industry self-regulation, Ministry inspections and the use of fees and penalties.

One of the most high-profile decisions the Ministry of Natural Resources made during the reporting period was about how land is used in Temagami in Northern Ontario.

Years Of Consultation Not Reflected

After years of study and consultation, the Ministry asked the Comprehensive Planning Council – a citizens' advisory committee – to make its final recommendations on land use in Temagami. The Council's draft land use strategy was posted on the Environmental Registry for public comment. More than 1,400 comments were submitted. The Council made some changes based on those comments, then submitted its final plan to the Ministry.

In June, the Minister announced that he accepted 22 of the Council's recommendations, and others with

"minor" changes. Some of these changes were not minor. Contrary to the Council's recommendation, the Ministry will permit mining and logging in some head-water areas of Lady Evelyn Lake. The Minister's decision allows mining in the Temagami area for the first time in 24 years, and logging in more than one-third of the area's old-growth pine forests.

Since significant changes were made, a revised proposal should have been posted on the Registry. The government failed to integrate social, economic, and environmental considerations. Originally, the Planning Council was asked to conduct a socio-economic study to help do that. However, the current government withdrew funding for the study. Without this information, and without public input on the final land use strategy, it is not surprising that the government's decision reflected mining and logging interests.

How The Decision Was Made:

The Ministry said the proposal was developed by a working group that included environmentalists and industry representatives, and that it was widely circulated. It was posted on the Environmental Registry for a 30-day comment period.

The Minister approved the Strategy "with modification." The decision notice said only one written submission was received. Despite requests from my office, the Ministry did not provide the draft proposal, the approved Strategy or the public submission.

What The Decision Means:

I did not assess the impact of this decision, but I will review it when I receive the information I requested from the Ministry.

The Ministry of Natural Resources' Decision-Making Processes

The Ministry's most significant legislative, policy and regulatory changes were not posted on the Environmental Registry, and for the most part, were not open to public consultation other than legislative committee hearings (see chart on page 32).

There were problems with the few proposals the Ministry did post. Several notices were outdated. In one case, a notice about a proposed Remote Tourism Strategy for Cochrane invited the public to open houses that had been held by the time the notice was posted.

Some of the Ministry's parks planning proposals were posted before any background information or policy options were available, so the public did not have much to comment on. The Ministry should develop standard procedures so that it posts these proposals at the right times during the planning process.

Delays in posting decisions was another problem. Even though decisions were made on some proposals posted in 1995, those decisions were still not posted by the end of 1996.



Ministry of Northern Development and Mines

The Ministry of Northern Development and Mines significantly changed how it regulates mine closure and rehabilitation.

However, it did not use the Environmental Registry during 1996.

The Decision: Mining Act Amendments

The *Savings and Restructuring Act* amended the *Mining Act* to create a self-certification system for mine closure and rehabilitation plans.

How The Decision Was Made:

These amendments were made without adequate public consultation. They were not posted on the Environmental Registry. The Ministry consulted with selected stakeholders in 1995, and a few stakeholders made their comments to a legislative committee.

The Ministry committed to posting the regulations, which will have more details on these changes, on the Environmental Registry.

What The Decision Means:

The *Mining Act* was changed in 1989 to require mine site rehabilitation as part of a mine's closure and that funds be set aside

for this. Mine operators had to report details of advanced exploration, production and closure plans to the Ministry. Before these changes were made, there were problems with clean-up and remediation of some sites. For example, unconfined sulphide tailings had contaminated lakes, rivers and streams with acidic leachate and silt.

Several issues remain. Some sites were abandoned and left in partial states of rehabilitation. Many were abandoned with little or no attempt at rehabilitation and sometimes the municipality is left to clean up. In 1991, the Ministry estimated more than 3,000 abandoned sites in Ontario may require some rehabilitation – nearly 300 may be hazardous to public health and safety, and the environment. The 1996 changes address some of these issues but also roll back other positive features of the 1989 amendments.

Changes include:

- Mine developers have more flexibility in designing the financial assurance provisions of their mine closure plans. A corporation may now pass a financial test or pledge financial assurance using less secure assets or royalties instead of providing cash or bonds. In some cases, the environmental damage caused by a mine may exceed the value of the less secure financial assurance provided.
- Mine developers do not need a Director's approval for a mine closure and rehabilitation plan before they start operations. Instead they have to prepare a closure plan and certify it themselves.
- Mine developers have to progressively rehabilitate mine sites whether or not a mine site closure has started or a closure plan has been filed.

The Ministry says the new self-certifying system for mine closure plans will be more efficient and require fewer staff. It also says it will use spot checks to ensure compliance with mine closure standards. But mine closure and rehabilitation compliance staff have dropped from 18 to five. One thing is clear – clean-up costs for many sites will be passed on to Ontario taxpayers despite the goal of the *Savings and Restructuring Act* to save taxpayers money.

Ministry of Transportation

The Ministry posted two decisions during the reporting period. One posting showed the need to remove jargon from Environmental Registry notices.

The Decision: Bridge Painting Guideline

The Ministry of Transportation finalized its Bridge Painting Guideline to help minimize the environmental effects of painting bridges.

How The Decision Was Made:

The 30-day comment period was appropriate, but the posted description was too vague and contained jargon. The description did not even mention bridge painting. Instead, it used the term "structural steel coating rehabilitation process." This could be one reason why no one commented on the proposal.

What The Decision Means:

The Guideline does a good job of describing the environmental effects of bridge painting and the best management practices to reduce environmental damage. Its emphasis on pollution prevention is consistent with the *Environmental Bill of Rights*.

Unfortunately, the Guideline is for reference only – Ministry staff and contractors do not have to comply with it. This contradicts the Ministry's 1996 Business Plan, which says it will set standards for the quality of contractor services and products, and make sure those standards are met.

Decision-Making Issues Across Ministries

Decisions Not Posted On The Registry

Too many decisions were not posted on the Environmental Registry, closing the door to environmental decision making (see chart on page 32).

Using The Environmental Registry

The Registry is a powerful public participation tool, but it is only one part of an adequate public participation system. Ministries should also provide additional comment opportunities like public meetings, mailings and newspaper announcements.

When ministries did post an environmentally significant proposal, there was often no attempt to explain the potential environmental effects. In most cases, ministries have prepared information on the environmental, social and economic effects of a proposal and the *Environmental Bill of Rights* allows ministries to include a Regulatory Impact Statement for proposed regulations. Regulatory Impact Statements assist the public to evaluate proposals and should be included with complex proposals.

I encourage all ministries to ensure all posted proposals are clearly written, accurately summarized and well organized with technical information explained.



Decision

Ministry Rationale

ECO Comment

*Agriculture, Food and Rural Affairs***Bill 46, Ministry of Agriculture, Food and Rural Affairs, Statute Law Amendment Act, 1996**

- established AgriCorp, a Crown agency to deliver crop insurance, market revenue and other agri-food programs
- amended or revoked a number of Acts administered by or affecting OMAFRA and enacted three new Acts
- amended *Game and Fish Act*

- not posted because O.Reg. 482/95 invoked

- Ministry met minimum legal requirements

Grant for Cornwall Ethanol Plant

- \$3-million grant for Cornwall's new ethanol production facility, which will create a market for about one-third of Eastern Ontario's corn crop

- not posted because of financial and administrative exception as this was a financial transaction

- appropriate exception
- possible failure to comply with EBR requirement to consider SEV

- did not respond to ECO inquiry about SEV consideration

Eliminating horticultural inspectors

- not environmentally significant because horticultural inspectors verify grade standards of produce and are not responsible for pesticide monitoring; this is done by the Pesticides Residues Program, although inspectors did pick up random samples for pesticide sampling; samples will continue to be collected by Ministry staff and the pesticide lab will provide testing

- ECO will monitor for environmental consequences

- did not respond to ECO inquiry about SEV consideration

*Consumer and Commercial Relations***Bill 54, Safety and Consumer Statutes Administration Act, 1996**

- establishes a self-funded, not-for-profit organization to give industries a greater role in delivery of public safety programs and services
- delegates role of MCCR in industry monitoring, health and safety inspection for certain activities, e.g., gasoline handling, to not-for-profit organization

- not posted because of administrative nature of Bill

- inappropriate exception

- not environmentally significant

- possible failure to consider environmental significance

- considered SEV but because no significant impact on environment, SEV did not apply

*Environment and Energy***Sunsetting Intervenor Funding Project Act**

- decision not to continue Intervenor Funding pilot project, which created a statutory process for awarding up-front funding to individuals or organizations wishing to participate in hearings before the Environmental Assessment Board, the Ontario Energy Board and Joint Boards

- not posted because it was not a prescribed Act; Ministry of Attorney General's jurisdiction; the announcement on the Registry was for information purposes only and does not make MOEE responsible for the legislation

- avoids public participation due to technicality

- did not respond to ECO inquiry about SEV consideration

- possible failure to comply with EBR requirement to consider SEV

Regulation 170/96 to amend Regulation 561/94 made under the Environmental Protection Act

- amends a regulation dealing with effluent monitoring and effluent limits for the industrial minerals sector with respect to the application of the regulation and to by-passes of sampling points

- not posted because administrative in nature

- inappropriate exception

- deemed not environmentally significant

- possible failure to consider environmental significance

- no requirement to consider SEV

- no other public consultation

- possible failure to comply with EBR requirement to consider SEV

Decision	Ministry Rationale	ECO Comment
Environment and Energy		
Elimination of certain Agencies, Boards and Commissions <ul style="list-style-type: none"> task force recommended the elimination of the Farm Pollution Advisory Committee 	<ul style="list-style-type: none"> not posted due to O.Reg. 482/95 exemption did not respond to ECO inquiry about SEV consideration 	<ul style="list-style-type: none"> Ministry met minimum legal requirements possible failure to comply with EBR requirement to consider SEV
Health		
Elimination of water tests <ul style="list-style-type: none"> decision to stop testing Ontario tap water for bacteria beginning September 1, 1996 	<ul style="list-style-type: none"> not environmentally significant because decision will not alter quality or accuracy of testing; decision by MOEE to stop routine testing and MOH followed suit; transfer of testing from public to private sector or municipal labs did not respond to ECO inquiry about SEV consideration 	<ul style="list-style-type: none"> possible failure to consider environmental significance possible failure to comply with EBR requirement to consider SEV
Management Board Secretariat		
Accelerated disposal of surplus government lands <ul style="list-style-type: none"> province to market surplus government land throughout Ontario for productive development 	<ul style="list-style-type: none"> not posted because decision was financial and administrative, and not environmentally significant sale of land not environmentally significant in itself; land sales involving ecologically sensitive areas are protected under Class Environmental Assessment process some stakeholder consultation 	<ul style="list-style-type: none"> inappropriate exception possible failure to consider environmental significance
Municipal Affairs and Housing		
Bill 86, Better Local Government Act, 1996 <ul style="list-style-type: none"> makes many amendments to municipal legislation, including adding a new section to the <i>Municipal Act</i> to limit nuisance lawsuits based on the escape of water or sewage from water or sewage works 	<ul style="list-style-type: none"> not posted because not environmentally significant - purpose is to protect municipalities from being sued by insurance companies did not merit SEV tracking and consideration consultation through Who Does What panel, legislative and committee debate 	<ul style="list-style-type: none"> Ontarians can no longer sue in public and private nuisance for damage to their property from municipal sewers possible failure to comply with EBR requirement to consider SEV
Natural Resources		
Bill 36, An Act to Amend Certain Acts Administered by the Ministry of Natural Resources, 1996 <ul style="list-style-type: none"> amendments related to Crown forest management, increasing revenues through park entrance and user fees, and allowing the privatization of provincial parks some minor but positive measures to promote black bear protection, and a protection of property defence for deer culling are introduced as well 	<ul style="list-style-type: none"> no response received to date 	

Decision

Ministry Rationale

ECO Comment

*Natural Resources***Bill 52, Aggregate and Petroleum Resources Statute Law Amendment Act, 1996**

- simplifies and removes legislation and regulations governing aggregate resources sector, establishes a self-regulation model of enforcement
- delegates some MNR responsibilities to Ministry of Transportation
- renames *Petroleum Resources Act*, simplifies regulations governing the petroleum and brine (salt) industries
- private inspectors can be engaged to make compliance orders

- not posted because intended it to be exempted from posting by O.Reg. 482/95 but did not receive Third Reading before Sept. 30/96; will be posted as an exception under s. 30 due to equivalent public participation (public legislative committee hearings)
- did not respond to ECO inquiry about SEV consideration

- inappropriate exception - legislative committee hearings were not equivalent public participation
- only after ECO inquiry did Ministry commit to post as exception (but Ministry failed to post in 1996 or early 1997)
- possible failure to comply with *EBR* requirement to consider SEV

Regulation 257/96 to amend Regulation 525 made under the Game and Fish Act

- exempts those who sell or purchase hides of black bear, deer or moose, or antlers of caribou, deer or moose from s. 51 of the *Act*, which prohibits the sale of a game animal without a licence

- not posted because administrative
- deemed not environmentally significant
- did not respond to ECO inquiry about SEV consideration

- inappropriate exception
- possible failure to consider environmental significance
- possible failure to comply with *EBR* requirement to consider SEV

Regulation 296/96 to amend Regulation 951 made under the Provincial Parks Act

- creates a new park, Massasauga Provincial Park (which has had interim status as Blackstone Harbour (Massasauga Wildlands) Provincial Park)

- will be posted as exception notice; public consultation carried out prior to enactment of *EBR*
- determination of environmental significance and consideration of SEV subject to procedures outlined in MNR's *EBR* procedures manual

- only after ECO inquiry did Ministry commit to post as exception (but Ministry failed to post in 1996 or early 1997)

Regulation 452/96 to amend Regulation 167/95 made under the Crown Forest Sustainability Act

- approves the Forest Management Planning Manual dated September 1996

- not posted because regulation only dealt with administrative process of formalizing status of Manual under *Act*; met requirements of *EBR* at time Manual was finalized through appropriate posting and consideration of comments at that time
- did not respond to ECO inquiry about SEV consideration

- posted as exception after ECO inquiry
- inappropriate exception — not equivalent public participation for final draft of Manual
- Ministry referred to SEV in Manual

Regulation 453/96 made under the Public Lands Act

- removes some approval requirements as a result of Bill 26
- work permits now only required for constructing buildings, trails; water crossings or roads on public land; dredging or filling shore lands; etc.

- not posted because O.Reg. 482/95 invoked, but missed deadline of Sept. 30/96; has undertaken to post exception file based on prior consultation with key interest groups
- considered SEV based on evaluation criteria

- inappropriate exception
- Ministry failed to post in 1996 or early 1997

Regulation 454/96 made under the Lakes and Rivers Improvement Act

- removes some approval requirements as a result of Bill 26
- approval now only required to construct or make improvements to a dam; construct a large water crossing draining; channelize a river or stream with adverse effects to fish; etc.

- not posted because O.Reg. 482/95 invoked, but missed deadline of Sept. 30/96; has undertaken to post exception file based on prior consultation with key interest groups
- considered SEV based on evaluation criteria

- inappropriate exception
- Ministry failed to post in 1996 or early 1997

Decision	Ministry Rationale	ECO Comment
Natural Resources		
Reintroduction of Managed Forest Tax Rebate Program <ul style="list-style-type: none"> offers property tax rebates to owners who manage their forests for long-term environmental benefits owners must submit a management plan based on guidelines set by MNR 	<ul style="list-style-type: none"> not posted because of exception under s. 30(1)(a), <i>EBR</i> (equivalent public participation); program was in place from 1973 to 1991; its reinstatement was an election commitment; all previous participants in the program were notified by mail of the reinstatement after the decision was made did not respond to ECO inquiry about SEV consideration 	<ul style="list-style-type: none"> exception not posted as required possible failure to comply with <i>EBR</i> requirement to consider SEV
Hiawatha First Nation to govern Serpent Mounds Park <ul style="list-style-type: none"> MNR will turn over all of the park's fixed assets to Hiawatha First Nation and will assist, where possible, in setting up the park operation to create an economic development opportunity for the community 	<ul style="list-style-type: none"> not posted because considered to be an operational matter based purely on financial decisions, so not subject to <i>EBR</i> did not respond to ECO inquiry about environmental significance did not respond to ECO inquiry about SEV consideration 	<ul style="list-style-type: none"> inappropriate exception possible failure to consider environmental significance possible failure to comply with <i>EBR</i> requirement to consider SEV
Elimination of certain Agencies, Boards and Commissions <ul style="list-style-type: none"> task force recommended the elimination of the Moose River Basin Environmental Information Partnership Board, Provincial Parks Council, Windigo Interim Planning Board, Shibogama Interim Planning Board and Whitedog Area Resources Committee 	<ul style="list-style-type: none"> not posted because considered to be an operational, administrative matter, not subject to <i>EBR</i>; natural resource policy is not formulated by virtue of such bodies did not respond to ECO inquiry about environmental significance did not respond to ECO inquiry about SEV consideration 	<ul style="list-style-type: none"> inappropriate exception possible failure to consider environmental significance possible failure to comply with <i>EBR</i> requirement to consider SEV
Northern Development and Mines		
Reopening of mining lands in Temagami <ul style="list-style-type: none"> decision to allow staking of new mining claims in areas identified for resource development, beginning September 17, 1996 	<ul style="list-style-type: none"> not posted because staking considered to be an administrative matter not environmentally significant because if development goes beyond staking, <i>Mining Act</i> and regulations provide for environmental protection; only lands identified by Comprehensive Planning Council as suitable for mineral development were reopened staking of claims not considered to have environmental impact broad public consultation 	<ul style="list-style-type: none"> appropriate exception
Regulation 503/96 made under the Mining Act <ul style="list-style-type: none"> amends prescribed forms required to record a staked mining claim; transfer an unpatented mining claim; declare assessment or exploration work; declare prospecting and regional surveys on Crown land; and provide notice of intention to perform assessment work 	<ul style="list-style-type: none"> not posted because no environmental impact and predominantly administrative allows forms to be changed without Order-in-Council approval did not respond to ECO inquiry about SEV consideration 	<ul style="list-style-type: none"> appropriate exception possible failure to comply with <i>EBR</i> requirement to consider SEV

Ministry	Reported actions (relative to the 1994-95 recommendations)	Commitments made (relative to 1994-95 recommendations)	ECO Comments/Other Issues
OMAFRA	No action undertaken, but the Ministry stated that it plans to work toward implementing some of the recommendations in 1997.	Commitments to update its SEV, and improve its <i>EBR</i> manual by including procedures for providing full text of proposals, providing high-quality postings, allowing longer than minimum comment periods and processing applications.	The report was heavier on commitments than actions. The Ministry stated that it made no environmentally significant decisions in 1996.
MBS	The report contained minimal information related to the recommendations.	No commitments made relative to recommendations. Ministry committed to incorporate <i>EBR</i> considerations into Ontario Public Service Guidelines.	Report lacked substance.
MCzCR	No action undertaken, but the Ministry stated that it plans to work toward implementing some of the recommendations in 1997.	Commitments to rewrite the SEV, finalize the <i>EBR</i> guide (and post it on the MCzCR local area network), increase staff awareness of <i>EBR</i> requirements, and promote the <i>EBR</i> .	The MCzCR report was heavier on commitments than actions.
MCCR	The Ministry has implemented providing full text of proposals, posting high-quality proposal descriptions, requiring broad SEV consideration, allowing for more than the minimum posting time.	Commitments to enhance training, cooperate in developing ground water strategy, and finalize its instrument classification regulation.	MCCR reported significant progress toward <i>EBR</i> implementation although it has not developed processes for handling Applications.
MTO	The Ministry has implemented tailoring of environmental significance guidelines, documentation of environmental significance and SEV consideration, allowing more than the minimum posting time. Also, all program areas were reminded to consider the SEV in policy development.	Commitment to evaluate the effectiveness of "MOEE groundwater strategy."	MTO reported significant progress toward <i>EBR</i> implementation.
MNDM	Limited action undertaken. Procedures for SEV consideration, although untested, have been established.	Commitments to complete instrument classification, consider SEV for instruments, provide high-quality Registry postings, provide full text of proposals.	MNDM has made significant commitments but has taken limited action toward implementation of the recommendations.
MOH	No action undertaken.	Made qualified commitments to amend SEV, provide full text, provide high-quality postings, publicize the <i>EBR</i> .	The MOH report provided only weak commitments.
MEDTT	No action undertaken.	Commitments to provide full text of proposals, and allow more than the minimum posting time. Made qualified commitment to SEV changes.	MEDTT has yet to develop <i>EBR</i> procedures. The report was heavier on commitments than on actions.

SUMMARY OF 1996 MINISTRY REPORTS

Ministry	Reported actions (relative to the 1994-95 recommendations)	Commitments made (relative to 1994-95 recommendations)	ECO Comments/Other Issues
MOL	Action undertaken on publicizing the <i>EBR</i> .	Commitments to consider SEV, document SEV consideration, allow for more than the minimum posting time, provide high-quality postings as well as full text of proposals.	MOL does not foresee making any environmentally significant decisions "in the near future." The Ministry, however, has taken actions and made commitments relative to the recommendations.
MMAH	The Ministry has tailored the environmental significance guidelines and extended comment periods.	Commitments to update the SEV and provide information and training to staff during 1997 on the Ministry's new <i>EBR</i> procedures.	The Ministry has demonstrated its commitment to <i>EBR</i> implementation by developing new <i>EBR</i> procedures and undertaking a review of its SEV.
MNR	Developed procedures for Applications, promoted principles outlined in the SEV and developed environmental protection and sustainability goals and objectives.	Commitments to complete instrument classification regulation, to provide reasons to applicants whose Applications are rejected and to strengthen monitoring and reporting. Made qualified commitments to provide full text of proposals, and provide high-quality postings on the Registry. Rejection of SEV consideration for instruments, and allowance of more than the minimum Registry comment period.	MNR has implemented three recommendations and has partly implemented or committed to implementing several others. It was the only ministry to take action on developing environmental protection and sustainability goals and objectives. MNR acknowledged that "administrative protocols and procedures were not satisfactorily addressed" but that the Ministry would "improve upon those circumstances."
MOEE	Substantial action undertaken to take sole responsibility for the Environmental Registry and to upgrade the Registry system to Web technology. The Ministry continued to provide training and education about the <i>EBR</i> . MOEE has developed comprehensive <i>EBR</i> procedures, tailored the environmental significance guidelines, integrated SEV consideration into decision making and requires documentation of SEV consideration. The Ministry frequently extended the 30-day minimum Registry posting time for complex proposals. The Ministry also consulted with the public on its proposed amendments to its instrument classification regulation, as recommended.	Commitment to undertake further staff training, focusing on the importance of quality Registry postings (including the provision of a contact name, address, telephone and fax number). The Ministry also committed to strengthening monitoring and reporting efforts. The Ministry will continue to improve written reasons to applicants whose Applications are rejected. The Ministry commits to develop a more reliable and economical method of detecting cryptosporidium in drinking water in partnership with the ministries of Health and Agriculture, Food and Rural Affairs and the University of Guelph.	MOEE has made substantial progress on some recommendations and made significant commitments to implement other recommendations. MOEE did not respond to several recommendations and rejected others. Contrary to the 1994-1995 recommendations, MOEE still does not document environmental significance, or consider its SEV for exceptions to Registry posting or for instruments.

How Ministries Cooperated With The ECO

In my 1994-95 report I made recommendations to improve the way ministries carry out various *Environmental Bill of Rights* processes. For example, when ministries use the Environmental Registry properly, Ontarians can contribute to the decision-making process and help ensure the best possible outcome. Proper use of the SEV ensures that ministry environmental values are incorporated into each decision.

All 12 ministries submitted reports (see summary chart on pages 36-37) on their progress toward implementing my

The Ministry of Natural Resources implemented, partly implemented or committed to implementing 10 recommendations but indicated no intended action on another four. However, the Ministry did not respond to some requests for information, and generally took longer than other ministries when it did respond. The Ministry failed to cooperate with my process review by refusing to let my staff examine its files or interview its staff. The Ministry acknowledged in its report that "administrative protocols and procedures were not satisfactorily addressed" in 1996, but that it would "improve upon those circumstances" in the future.



1994-95 recommendations. I used these reports as the main, but not the sole, indicators of how the ministries cooperated with my office.

The Ministry of Environment and Energy implemented, partly implemented or committed to implementing 14 recommendations but indicated no intended action on another seven. The Ministry usually responded promptly to my requests for information on decisions that were not posted on the Environmental Registry. During my review of the Ministry's *Environmental Bill of Rights* processes, Ministry staff were helpful and cooperative.

Reports from the Ministry of Consumer and Commercial Relations and the Ministry of Transportation indicated considerable progress toward implementing my recommendations. The Ministry of Agriculture, Food and Rural Affairs reported more commitments than actions, but it did cooperate with my review of its processes. Management Board Secretariat provided little information in its report. The Ministry of Northern Development and Mines' report indicated some progress toward implementing my 1994-95 recommendations. The Ministry of Municipal Affairs and Housing developed new *Environmental Bill of Rights* procedures and will review its SEV.

Recommendations

Environmental Registry Proposal Notices

Ministries assess and summarize the potential environmental effects of proposals, include this information in the Environmental Registry posting, and provide Regulatory Impact Statements for proposed regulations.

Ministries ensure that proposal notices avoid jargon and provide clear information about the purpose of the proposed decision and the context in which it is being considered.

Ministries ensure that proposal notices include a contact name, telephone and fax number, and information about where people can review written material on proposals.

Public Comments On Proposals

Ministries ensure that the public is not asked to comment on too many proposals all at once. Where this is not possible, ministries should extend comment periods to compensate for overlapping comment periods.

Ministries consider the complexity of an issue and the level of public interest when deciding on the length of comment periods.

Environmental Registry Decision Notices

Ministries ensure that decision notices contain sufficient information including where people can get a copy of the new policy, Act or regulation.

Public Consultation

Ministries recognize that posting proposals on the Environmental Registry is the minimum legal requirement and provide additional opportunities for public consultation whenever possible.

Ministries follow the process used by the Ministry of

Environment and Energy for **Responsive Environmental Protection** in publicizing and inviting comment on major initiatives.

3.9 Ministries stop using omnibus-style legislation to reform Ontario's environmental laws and regulations, except for housekeeping matters.

3.10 Ministries assess and summarize the anticipated environmental consequences of planned cutbacks and transfer of responsibilities, make the information public, and allow the public to comment.

Ministry of Environment and Energy

3.11 The Ministry of Environment and Energy establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.

3.12 The Ministry of Environment and Energy provide adequate resources to enforce its regulations and regularly report on enforcement activities.

3.13 The Ministry of Environment and Energy publish a plan for updating certificates of approval to ensure the new standards of the Three-Year Plan for Standard-Setting are met.

3.14 The Ministry of Environment and Energy conduct audits to ensure that all municipal drinking water supplies, especially smaller treatment plants and plants with historical compliance problems, undergo adequate routine testing.

3.15 The Ministry of Environment and Energy update its goals regarding acid rain, set clear emission and deposition targets for pollutants that contribute to acid rain, and establish control programs to meet those targets.

Ministry of Natural Resources

3.16 The Ministry of Natural Resources establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.

- 3.17 The Ministry of Natural Resources provide adequate resources to enforce its regulations and regularly report on enforcement activities.
- 3.18 The Ministry of Natural Resources assess and report on the effectiveness of the self-monitoring system with respect to aggregates and forest management in achieving environmental protection and make this information public annually.

Ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing

- 3.19 The ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing work together to develop ways to ensure that up-front financial assistance is provided to participants in environmental decision making and hearings

Ministry of Northern Development and Mines

- 3.20 The Ministry of Northern Development and Mines assess and report on the effectiveness of the self-certifying system for mine closure plans in achieving environmental protection.





Part 4

*I received 13 Applications for Review
and 17 Applications for Investigation
during this reporting period. The
expertise and commitment shown by
most applicants was impressive.*

Part 4:

Reviews And Investigations

What Is A Review?

Ontarians can ask ministries to review existing environmental policies, laws, regulations and instruments, or the need for new environmental policies or laws. These are called Reviews.

What Is An Investigation?

Ontarians can also ask ministries to investigate if they think someone is breaking, or is about to break, an environmental law, regulation or instrument. These are called Investigations.

My office assists people who want to apply for Reviews and Investigations. I forward completed Applications to the ministries and review how each Application is handled.

I received 13 Applications for Review and 17 Applications for Investigation during this reporting period. The expertise and commitment shown by most applicants was impressive. For a summary of all the Applications I forwarded to the ministries in 1996, see the Applications Forwarded To Ministries on page 44, and Appendices A and B.

The Review and Investigation processes applied to the Ministry of Environment and Energy throughout the reporting period. Beginning April 1, 1996, both processes applied to the ministries of Natural Resources, Northern Development and Mines, and Consumer and Commercial Relations and the Review process applied to the Ministry of Agriculture, Food and Rural Affairs.

Natural Resources Issues Raised

Some applicants were concerned about the Ministry of Natural Resources' fishery management at a cottage lake. Others asked for changes to a quarry permit to prevent damage to an important wetland along Lake Ontario. Another Application asked for a Review of the government's decision to allow mining in Temagami.

Old And New Problems

Applications to the Ministry of Environment and Energy reflected many of the issues raised last year – including air emissions from lead smelters and waste transfer sites, neighbourhood traffic, illegal burning of garbage and concerns about landfill management.

New issues were raised too, like the effect of a closed mine ground and surface water, compliance with waste audit requirements and the importance of intervenor funding.

Applications Improve Environment

Some Applications led to environmental improvements. In one case, the applicants alleged that a large company was not doing waste audits and waste reduction workplans required by the 3Rs regulations. The Ministry of Environment and Energy investigated. It found the company was violating the *Environmental Protection Act* in relation to air emissions and liquid industrial waste, as well as the 3Rs regulations. The Ministry issued a violation notice and the company is working on a plan to improve its compliance.



In another case, the applicants asked the Ministry of Environment and Energy to revoke a number of certificates of approval for a closed lead smelter near a residential area. The Ministry denied this Application for Review, but revoked some certificates shortly after it received the Application. The Ministry had already started negotiations with the company but revoking the unused certificates, and it looks like the Application helped move those talks along.

Applications Denied

The Ministry of Environment and Energy and the Ministry of Natural Resources denied several Applications that raised important public policy issues. The ministries' reasons were technically acceptable, but valid concerns raised by the applicants were not addressed.

One Application for Review raised the need for intervenor funding legislation (see also Part 3: Ministry Environmental Decisions). The Ministry of Environment and Energy denied the Application because it had already done an internal review. The Ministry's reasons did not indicate if the Ministry adequately reviewed the evidence provided by the applicants, or if it considered any public input during its internal review. Shortly after denying this Application, the Ministry posted notice on the

Environmental Registry that the *Intervenor Funding Project Act* – the law that made intervenor funding possible over the past eight years – would not exist after March 31, 1996.

Another Application requested a Review of fisheries management by the Ministry of Natural Resources in Buckshot Lake. The applicants said the lake should be managed for trout, not walleye. Lake trout management requires stricter controls for local development. The applicants were concerned that a proposed subdivision would raise the lake's phosphorus levels and prevent restoration of the lake trout population. However, the Ministry denied the Application and did not respond adequately to the comprehensive evidence presented by the applicants.

How Investigations Were Handled

Sometimes Ontarians applied for an Investigation of an issue they had raised with a ministry in the past, but the issue was never resolved to their satisfaction. In at least two cases the Ministry of Environment and Energy assigned these kinds of Investigations to the same local offices that dealt with the previous complaints. This provides the benefit of local-level experience, but does not allow for a fresh perspective. I encourage ministries to combine a new, independent review with the expertise of local staff in these cases.

APPLICATIONS FORWARDED TO MINISTRIES

Applications for Review

Total Forwarded To Ministry of

<i>Environment and Energy</i>	6
<i>Denied</i>	4
<i>Undecided</i>	1
<i>Under way</i>	1

Total Forwarded To Ministry of

<i>Natural Resources</i>	4
<i>Denied</i>	3
<i>Undecided</i>	1

Total Forwarded To Ministry of

<i>Northern Development and Mines</i>	1
<i>Denied</i>	1

Applications for Investigation

Total Forwarded To Ministry of

<i>Environment and Energy</i>	10
<i>Completed</i>	4
<i>Denied</i>	2
<i>Undecided</i>	3
<i>Under way</i>	1

Total Forwarded To Ministry of

<i>Natural Resources</i>	6
<i>Denied</i>	2
<i>Undecided</i>	3
<i>Under way</i>	1

GROUNDWATER UPDATE

In my 1994-1995 annual report, I recommended that the ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation work together to upgrade Ontario's groundwater management framework.

Ministry of Environment and Energy Takes The Lead

In its 1996 Business Plan, the Ministry of Environment and Energy committed to developing a plan to protect Ontario's groundwater. Later in the year, the Ministry announced it will head up a review of groundwater management. I commend the Ministry for taking these important first steps.

A Comprehensive Groundwater Strategy For Ontario

I urge the government to make it a priority to develop a sustainable strategy for restoring, protecting and conserving Ontario's groundwater, which includes:

- *Economic assessment of the value of our groundwater resource, including current and replacement value.*

- *Strong emphasis on preventing contamination.*
- *Establishment of specific groundwater protection zones.*
- *Assistance to regional or municipal governments to develop controls to restrict activities that may contaminate groundwater.*
- *Focus on priority candidate regions.*
- *A publicly accessible inventory of groundwater resources.*
- *A long-term monitoring network of water levels for major aquifer systems.*
- *An inventory of current and past sources of contamination and evaluation of their potential effect on health and ecosystems.*
- *A program to control the effects of contaminated sites.*
- *A focus on the cumulative effects of agriculture, septic systems, lawn chemicals and municipal systems on groundwater.*
- *A publicly accessible data management system, including water-well records, monitoring information, complaints, inspections and enforcement, and information about contamination and remediation.*

Last year, I recommended that the Ministry of Environment and Energy either propose changes to the refillable soft drink container regulations under the Environmental Protection Act and post them on the Environmental Registry, or enforce the existing regulations.

In its public consultation paper **Responsive Environmental Protection**, the Ministry said the regulations need revision. Consequently, the Ministry did not enforce them during the reporting period.

Refillables Work

According to a recent study, recycling and disposing non-refillable plastic polyethylene terephthalate (PET) soft drink containers through the Blue Box program cost Ontarians about \$12 million a year. In contrast, refillable containers can be reused many times, saving resources and money while reducing pollution, litter and solid waste.

Better still, new refillable technology promises improved environmental and economic performance. Evidence suggests there are no technological and few economic barriers to adopting these new refillables in

Ontario. And handling costs are paid by beverage producers and consumers – not subsidized by taxpayers.

The Role Of Deposit-Refund Systems

Deposit-refund systems are worth exploring as a solution to waste management problems.

The Liquor Control Board of Ontario is a good place to start. A recent study estimated that the cost of recycling and landfilling liquor bottles in Ontario is about \$10 million a year. Municipal taxpayers foot most of this bill, while the Liquor Control Board continues to report a profit. A deposit-refund system would ensure the cost of managing these containers is paid for by the Liquor Control Board and its customers, not municipal taxpayers at large.

Next Steps

The Ministry of Environment and Energy and the Ministry of Consumer and Commercial Relations should work with Ontario beverage industries to assist them to implement refillable plastic container options. The Ministry of Environment and Energy should review progress made and publish the results.



Recommendations

- 4.1 Ministries develop procedures for handling Applications that include an independent evaluation for situations where the Application involves previous decisions by local staff.
- 4.2 Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *Environmental Bill of Rights* and cite any additional factors in their decision such as limited resources required to carry out a Review. Whenever possible, valid concerns of the applicants should be addressed.
- 4.3 The Ministry of Environment and Energy, along with input from other ministries, follow through on its commitment to develop a comprehensive groundwater management strategy.
- 4.4 The ministries of Environment and Energy and Consumer and Commercial Relations undertake environmental, scientific, economic and social research on the benefits and costs of adapting new refillable container technologies to Ontario's beverage industries and implementing a deposit-refund system for liquor containers, and make the information public.



Part 5

*Public input is the result of
consulting the community that not
uniquely protects the environment.*

Part 5:

Instruments

What Is An Instrument?

Companies and individuals usually have to get government approval to do something that will affect the environment. These approvals are called instruments and include orders, permits, licences and certificates of approval.

Classifying Instruments

Ministries must classify instruments (Class I, Class II and Class III) based on how environmentally significant the instrument is. Classification determines what kinds of approvals will be posted on the Environmental Registry for public comment and the extent of public participation opportunities.

Ontarians can only ask for a Review or Investigation, or apply for leave to appeal an instrument if it is classified. If an instrument is not classified, it does not have to be posted on the Environmental Registry and is not subject to Reviews, Investigations or appeals.

The Ministry of Natural Resources, Ministry of Northern Development and Mines, and the Ministry of Consumer and Commercial Relations had to classify their instruments within a reasonable time after April 1, 1996.

The Ministry of Natural Resources did not classify its instruments during the reporting period.

The Ministry of Northern Development and Mines drafted its classification proposal for instruments but had not posted it on the Environmental Registry at the end of the reporting period.

The Ministry of Consumer and Commercial Relations posted its instrument classification proposal but I asked the Ministry to repost it with better information and for a longer comment period. I commend the Ministry for doing this, but the new proposal did not include all environmentally significant instruments.

Posting Instruments On The Registry

The Ministry of Environment and Energy was the only ministry that had classified its instruments in 1996, and therefore the only ministry that gave people the opportunity to comment on instruments. Of approximately 2,000 instruments posted, more than 75 per cent were air emissions approvals. The rest were mostly approvals for water-taking and waste disposal site

The Ministry of Environment and Energy excepted many landfill and sewage related approvals because they were approved or exempted under the *Environmental Assessment Act*. To its credit, the Ministry posted about 75 of these as information notices on the Environmental Registry – letting Ontarians know that comments were welcome, but that they could not appeal the final decision. I encourage the Ministry to continue to use the Environmental Registry to inform the public about these kinds of decisions and to invite feedback.

Approval Denied, Environment Improved

Public input led to the denial of applications for instruments that did not adequately protect the environment. For example, after the public complained about a proposed air approval for Port Perry food factory, the Ministry of Environment and

Proposed in 1996, the Environmental Approvals Improvement Act contemplates dramatic changes to Ontario's approval system. Its most serious consequence is allowing Cabinet to set up deemed approvals systems under the Ontario Water Resources Act and the Environmental Protection Act. That means approvals will be deemed to exist if certain conditions are met. Companies and individuals will no longer have to get certain approvals from the Ministry of Environment and Energy, eliminating the public notice opportunities provided by posting those approvals on the Environmental Registry.

With deemed approvals, the Ministry of Environment and Energy will be less involved and the public will have fewer opportunities to comment. It will be harder for the Ministry to enforce environmental protection provisions. Ontarians will not be notified about proposed approvals through the Environmental Registry, will not be able to appeal them using the Environmental Bill of Rights, or apply for a Review or Investigation.

The Ministry of Environment and Energy says a deemed

approvals system will cut red tape and ease workloads. But it also gives Cabinet more power and discretion to exempt things – without telling the public first – from environmental approval requirements. And the Ministry will be able to avoid liability for problems that result from exemptions from certificate of approval requirements.

Deemed approvals systems pose other disadvantages:

- *There is no safeguard to restrict deemed approvals to minor activities – the system could be used for major activities too.*
- *Without certificates of approval, it will be hard for the Ministry of Environment and Energy to track and monitor numbers and locations of sources, source size and other data.*
- *Because the public notice and participation requirements of the Environmental Bill of Rights will not apply to deemed approvals, Ontarians will not be able to use certain environmental rights and I will not be able to review how these decisions are made.*

Air Approval Reposted

Ministries can decide whether an instrument proposal has been changed so much that it has become a new proposal. The Ministry of Environment and Energy reposted some instruments for this reason.

The Roastery Coffee Company in Toronto, for example, submitted four different applications to address public and Ministry concerns about noise and odor. The Ministry posted each new application on the Environmental Registry, and once the final decision was made, added a description of the whole decision-making process.

Posting Frustrates Public

A posted instrument involving Toronto sewage sludge frustrated the public for a number of reasons. The proposal was to treat sewage sludge in Toronto, then ship it to Sudbury and spread it on mine tailings. The Environmental Registry posting did not mention that the sludge would wind up in Sudbury – making it impossible for Sudbury residents to understand the impact of the proposal.



This posting also failed to explain how big the project was. It involved moving 10,000 tonnes of sludge every year for five years. Ontarians only got 30 days to comment (during peak vacation season), and there was no description of any other forms of public notice even though required by the *Environmental Bill of Rights*.

How Posting Instruments Affects Approvals Turnaround

Some people raised concerns that the requirement to post proposals for certificates of approval on the Environmental Registry added as many as 45 days to the approvals process. My review showed this is not the case:

- For approvals as a whole, turnaround times increased by 13 days (from 30 to 43 days) since the Ministry of Environment and Energy had to start posting on the Registry.
- For approvals posted on the Environmental Registry, turnaround times increased by 10 days (from 50 days to 60 days) during the same period.

These increases were due to several things, including reduced staff and increased workloads, which added to the processing time for all approval applications. Approvals that have to be posted were not delayed longer than approvals in general.

“Un-Classifying” Instruments

As part of its regulatory review initiative, the Ministry of Environment and Energy proposed removing some instruments from its classification regulation to reduce “clutter” on the Environmental Registry. I urge the Ministry to be cautious here, because removing instruments could also remove Ontarians’ rights to appeal, and to apply for Reviews and Investigations. The Ministry should implement the second stage of its Registry upgrade first. A more user-friendly Registry may eliminate the need to get rid of “clutter” instruments.

commendations

The Ministry of Natural Resources immediately comply with the *Environmental Bill of Rights* by drafting a proposal for classifying its instruments, provide full public consultation for the proposal, and implement it.

The Ministry of Environment and Energy assess how user-friendly the Environmental Registry becomes through the planned technical upgrade before deciding to strip the so-called "clutter" instruments from the Registry.





Part 6

*The Environmental Bill of Rights
gives Ontarians a number of
important legal rights.*

Part 6:

Other Legal Rights

The *Environmental Bill of Rights* gives Ontarians a number of important legal rights, including the right to:

- Appeal certain government decisions.
- Sue if someone is breaking, or is about to break, an environmental law and is harming a public resource.
- Sue for compensation for direct economic or personal loss because of a public nuisance that is harming the environment.
- Protection against reprisals for reporting environmental violations in the workplace.

Appeals

During 1996, the appeal process applied to the Ministry of Environment and Energy only. At December 31, 1995, 11 applications for leave to appeal were pending before the Environmental Appeal Board. Five of these applications were granted (all related to a decision on approvals for Petro-Canada products in Mississauga), five were denied, and one was withdrawn.

Seven new applications for leave to appeal were made in 1996. One was granted, four were denied, and two were withdrawn. The following appeals highlight some significant issues raised and decided during the reporting period.

Fletcher Tile

The Issue:

An application to the Environmental Appeal Board for leave to appeal the Ministry of Environment and Energy's decision to issue a certificate of approval to allow waste to be received at a

landfill in southwestern Ontario.

The Background:

In 1995, the Ministry posted a proposal to amend a certificate of approval for the landfill to include the submission of a closure plan. This landfill had been inactive since 1978, and although the owner, Fletcher Tile, had been trying to reopen it since the 1980s, the Ministry said the company had not shown that this could be done properly.

The Ministry received 17 comments on this proposal, including letters from local municipalities and a citizens' group supporting closing the landfill, and a request from Fletcher Tile to reopen it. During the comment period, Fletcher Tile committed to address all outstanding technical concerns. As a result, the Ministry reversed the original proposal, allowing Fletcher to reopen the site.

The Decision:

This was the first successful *Environmental Bill of Rights* leave to appeal application. The Environmental Appeal Board concluded that the Ministry of Environment and Energy Director may have acted unreasonably and that reopening the site could significantly harm the environment.

In November 1996, the applicants, Fletcher Tile, the local municipality and the Ministry reached a settlement agreement. As part of the agreement:

- The Ministry will revoke the certificate of approval.
- The Township will get the 25 acres of land from Fletcher Tile where previous landfilling occurred and submit a site closure plan.

- Fletcher Tile will keep about 150 acres of agricultural lands, identify the nature and location of waste on these lands, and submit an appropriate clean-up plan.

Petro-Canada Products

The Issue:

Five separate individuals or groups appealed decisions by the Ministry of Environment and Energy on two instruments – an air emissions approval and a sewage approval issued to Petro-Canada Products' Mississauga refinery.

The Decision:

The Environmental Appeal Board granted leave to appeal the air certificate of approval on two grounds:

1. It was unreasonable of the Director to issue an approval for which no application was made. In granting the certificate of approval, the Director allowed more than what was requested in the original application, and provided for expansion of the Petro-Canada refinery.
2. It was unreasonable of the Director to limit records retention for maintenance, repair, monitoring and recording activities related to the certificate of approval to two years, because this condition was applied as a generic provision, and the Director did not determine what was necessary in the public interest in this case, contrary to Ministry policy.

In a settlement reached by the parties in January 1997, Petro-Canada agreed to:

- Modify the refinery to reduce sulphur dioxide emissions to within 20 per cent of the current allowable legal limit by 1999.
- Restrict the burning of bunker oil as fuel for the boilers in the existing facility.
- Report on the status of sulphur dioxide emission controls to the Public Liaison Committee.
- Provide \$250,000 for research into airshed management.

The Right To Sue

Ontarians have the right to sue if someone is breaking, or is about to break, an environmentally significant Act, regulation or instrument and has harmed, or will harm, a public resource. People can also sue for personal damages caused by a public nuisance.

These rights were not used during the reporting period.

Whistleblower Rights

The *Environmental Bill of Rights* protects employees from workplace reprisals if they report the unsafe environmental practices of their employers. There were no whistleblower cases in 1997.





Part 7

*The Statement of Environmental Values
is a good tool for assessing how
well ministry complies with the
environmental protection goals of the
Environmental Bill of Rights.*

Part 7:

Statements of Environmental Values

What Is A Statement of Environmental Values?

Each ministry has a Statement of Environmental Values. The SEV should explain:

- how the ministry will consider the environment when it makes decisions that may significantly affect the environment.
- how the ministry will integrate environmental factors with social, economic, scientific and other considerations.

Setting Environmental Goals

The SEV is a good tool for assessing how each ministry complies with the environmental protection goals of the *Environmental Bill of Rights*. Last year, I recommended the ministries define environmental protection and sustainability goals and objectives for their day-to-day operations either in their SEVs or in separate but complementary public documents. The Ministry of Natural Resources was the only ministry to take any action on this.

The Ministry of Environment and Energy did not consider its SEV when developing its proposals for instruments, or for proposals that did not have to be posted on the Environmental Registry. It did consider its SEV and documented that consideration for all other posted proposals. However, some descriptions of how the SEV was considered were too brief and vague.

The Ministry did not appear to consider its SEV in carrying out its regulatory review initiative or in developing its 1996 Business Plan.

The Ministry of Natural Resources has excellent procedures for SEV consideration and documentation but did not seem to use them. The Ministry provided me with only one document showing how its SEV was considered, although I requested many more.

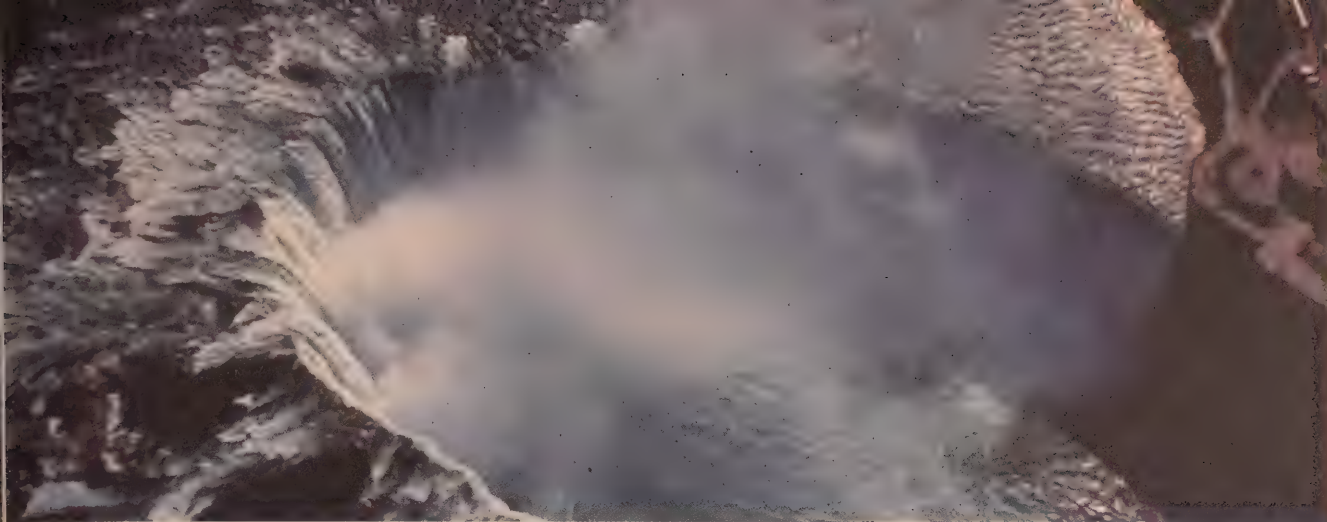
During this reporting period, I reviewed in more detail to what extent five ministries in particular considered their stated environmental values in developing their 1996 Business Plans.

Management Board Secretariat

Management Board Secretariat's Statement of Environmental Values says that, in operations of government and the public service, the health of the natural environment must be sustained for practical, economic and aesthetic reasons. It mentions the Green Workplace, Procurement, Information Technology and Property Development and Management as key environmentally significant aspects of the Ministry's mandate. It says real estate activities are considered significant too.

In its 1996 Business Plan, Management Board Secretariat focuses exclusively on economizing and reducing costs, without indicating how these goals might involve greening measures, even ones that explicitly aim to save money while protecting the environment, like waste reduction and recycling programs and energy efficiency measures. In fact, the environment was not mentioned at all.

The Ministry makes several references to real estate, including speeding the sale of government lands, but fails to note any potential environmental effects. My review showed that the Ministry incorrectly used an exception in the *Environment*



of Rights to avoid posting this initiative on the Environmental Registry (see Decisions Not Posted On The Registry in Part 3: Ministry Environmental Decisions).

Ministry of Citizenship, Culture and Recreation

In its SEV, the Ministry of Citizenship, Culture and Recreation states it will promote the conservation of Ontario's cultural and heritage in a way that promotes environmental sustainability, yet the word "environment" does not appear in its Business Plan. Nor is there any reference to the Ministry's SEV, suggesting it was not considered when the Ministry prepared its Plan. This violates the Ministry's SEV commitment to integrate social, economic and environmental considerations.

Ministry of Economic Development, Trade and Tourism

The Ministry of Economic Development, Trade and Tourism states in its SEV that it is committed to a productive and efficient economy that encourages sustainability of the environment. The former Ministry of Culture, Tourism and Recreation, which was previously responsible for tourism, stated in its SEV that tourism "depends on healthy communities, their unique culture and protection of the environment."

Meanwhile, the vision, goal and mission sections of the Ministry's Business Plan make no reference to the environment. It is remarkable since the SEV explicitly lists sustainability of the environment first among the Ministry's goals and objectives.

The Ministry's "operating philosophy" refers to "rich natural resource base as one of Ontario's strengths." However, the

environment is not included among the factors described as necessary "to achieve sustainable economic growth and renewal."

The Economic Development Strategy does not refer to the natural environment either as a "source" of new materials or as the "sink" into which economic activity dumps wastes or emissions. There is absolutely no recognition of the environmental basis of economic activity in Ontario.

Ministry of Health

In its SEV, the Ministry of Health says it will play a major role in preserving the physical and social environment and protecting Ontarians from existing potential health hazards caused by environmental contaminants. One of the Ministry's stated objectives is the prevention and promotion of activities to control cancer.

Health promotion is mentioned in the Minister's Message to the 1996 Business Plan. The Ministry's vision includes illness prevention and the promotion of healthy lifestyles. The Business Plan also mentions community-based solutions but there is not one reference to physical or social environments.

Ministry of Labour

The Ministry's SEV states its commitment to environmentally sound practices and greening its programs.

The Ministry's Business Plan makes no mention of monitoring proposals for environmental significance although reports to my office indicate this is in fact being done.

Directions For 1997

Each ministry acknowledged in their SEVs that much of their activity has environmental significance, but they gave little consideration to their stated environmental goals in carrying out that activity during 1996.

This lack of attention to the SEVs is unacceptable. Environmental accountability requires political and administrative will. Otherwise, the Statements of Environmental Values remain more rhetoric than institutional principles and practice.

I will continue to work with the ministries in 1997 to identify ways to put environmental values into action.

Recommendations

- 7.1 Ministries make every effort to apply the environmental values contained in their Statements of Environmental Values and integrate them into their Business Plans and other decision-making activities.



Part 8

*We expanded our environmental
resources materials to provide
citizens with a strong information
link about the Environmental Bill of
Rights, government initiatives and
environmental issues.*

Part 8:

Education Initiatives

Teaching The *Environmental Bill of Rights*

My staff and I made hundreds of educational presentations and speeches in 1996. We met with many groups and sectors, including MPPs, municipal leaders, environmental non-government organizations, business leaders, industry groups, chambers of commerce, service clubs, labour representatives, students and teachers. We complemented this by setting up displays at trade fairs, conferences, shopping malls and other public venues.

Getting The Word Out

We continued to distribute publications (approximately 30,000) to people throughout Ontario, including our popular **Ontario's *Environmental Bill of Rights And You***, an easy-to-use guide to the *Environmental Bill of Rights*.

Circulation of our newsletter **EBRights** grew to about 3,000. A survey conducted during the reporting period showed that readers value the newsletter as a tool for keeping up to date on *Environmental Bill of Rights* issues.

We introduced some new publications too, including brochures about how the *Environmental Bill of Rights* affects municipalities, organized labour and business. We developed **Teaching the *Environmental Bill of Rights***, a resource kit for high school teachers, produced an introductory video to the *Environmental Bill of Rights* and how people can get involved and launched our Web site.

Resource Centre Grows

We expanded our environmental resource materials to provide Ontarians with a strong information bank about the *Environmental Bill of Rights*, government ministries and environmental issues. Open to the public and staffed with research professionals, the Resource Centre also provides access to the Environmental Registry. As well, the complete text of all posted proposals and decisions is available from our office.

In-house Education Events

Throughout my term I have hosted educational events that bring together members of the community to share the insights of environmental experts. In 1996, guest speakers included Nigel Roome, Professor, Haub Program in Business and the Environment, Schulich School of Business, York University, who discussed how environmental issues are being introduced into the business curriculum and how business can meet its



environmental responsibilities. Arthur FitzGerald, an environmental consultant to the World Bank, shared his expertise on environmental protection guidelines for developing countries.

also held a multi-stakeholder roundtable to discuss volunteer compliance initiatives.

Ministry Stops Funding Registry Coordinator Position

unded by the Ministry of Environment and Energy, the Ontario Environment Network's Environmental Registry Coordinator provided invaluable educational support to non-government organizations during 1996.

Unfortunately, the Ministry's revocation of financial support for the position as of April 1997 ends this work.

Ministry Staff Training

a year, I recommended that all ministries increase their efforts to publicize the *Environmental Bill of Rights*, and the Environmental Registry in particular, to their staff and stakeholders. The ministries of Environment and Energy, Consumer and Commercial Relations, and Transportation made some progress toward this recommendation. Several ministries said they intend to conduct educational initiatives in 1997.

Recommendations

- 8.1 Ministries show their commitment to their stated environmental values by educating staff, stakeholders and clients about the *Environmental Bill of Rights*.
- 8.2 The Ministry of Environment and Energy address the gap left by the elimination of the Ontario Environment Network Registry Coordinator position by ensuring that efforts to educate the public on the Environmental Registry continue and are well coordinated.



Part 9

The right to a healthy environment is critical. We are fortunate that this right is entrenched in Ontario's Environmental Bill of Rights.

Part 9: Financial Statement

Office of the
Provincial Auditor
of Ontario



Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
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Auditor's Report

To the Environmental Commissioner

I have audited the statement of expenditures of the Office of the Environmental Commissioner for the year ended March 31, 1996. This financial statement is the responsibility of that Office. My responsibility is to express an opinion on this financial statement based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, this financial statement presents fairly, in all material respects, the expenditures of the Office of the Environmental Commissioner for the year ended March 31, 1996, in accordance with the accounting policies described in note 2 to the financial statement.

A handwritten signature in blue ink that reads "K.W. Leishman".

K.W. Leishman, CA
Assistant Provincial Auditor

Toronto, Ontario
July 3, 1996

Office Of The Environmental Commissioner

Statement of Expenditures For the Year Ended March 31, 1996

	For the Year Ended March 31, 1996	For the Period from May 30, 1994 to March 31, 1995
	\$	\$
Salaries and wages	1,030,035	336,123
Employee benefits (Note 4)	104,836	30,722
Transportation and communication	75,857	24,951
Services	597,181	603,646
Supplies and equipment	<u>151,467</u>	<u>375,174</u>
	<u>1,959,376</u>	<u>1,370,616</u>

See accompanying notes to financial statement.

Approved:



Environmental Commissioner

Notes to Financial Statement March 31, 1996

1. Background

The Environmental Commissioner, which commenced operation May 30, 1994, is an independent officer of the Legislative Assembly of Ontario, and promotes the values, goals and purposes of the *Environmental Bill of Rights, 1993 (EBR)* to improve the quality of Ontario's natural environment. The Office of the Environmental Commissioner monitors and reports on the application of the *EBR*, and participation in the *EBR*, and reviews government accountability for environmental decision making.

2. Significant accounting policies

(a) Basis of Accounting

The Office uses a modified cash basis of accounting that allows an additional 30 days to pay for expenditures incurred during the period just ended.

(b) Capital Assets

As is currently generally accepted for not-for-profit public sector entities, capital assets are charged to expenditure in the year of acquisition.

Expenditures

Expenditures are paid out of monies appropriated by the Legislature of the Province of Ontario.

Certain administrative services are provided by the Office of the Assembly without charge.

Pension Plan

The Office of the Environmental Commissioner provides pension benefits for its permanent employees (and to non-permanent employees who elect to participate) through participation in the Ontario Public Service Pension Plan (PSPF) established by the Province of Ontario.

The *Ontario Public Service Employees' Union Pension Act, 1994* provides for a reduction of the employer's contributions to the PSPF for each of the three fiscal years ending 1995-1997. For the current fiscal year, the impact of these reductions on the Office's pension expense was a reduction of \$45,100 (1995 - \$16,509).

The Office's share of contribution to the Fund during the period was \$16,401 (1995 - \$3,362) and is included in employee benefits in the statement of expenditures.

Audited Statement of Expenditures for the year ended March 31, 1997

Salaries and wages	\$1,117,600
Employee benefits	\$167,300
Transportation and communication	\$48,700
Services	\$232,900
Supplies and equipment	<u>\$39,500</u>
Total	<u>\$1,606,000</u>

Public Sector Salary Disclosure Act

A statement is provided under the *Public Sector Salary Disclosure Act*. The following employees of the Environmental Commissioner of Ontario were paid a salary of \$100,000 or more during the reporting period.

Employee	Salary	Taxable Benefits
Ligeti	\$109,652.76	\$262.68
Environmental Commissioner		



Part 10

The Environmental Bill of Rights makes the government responsible for protecting and conserving a healthy environment. As residents of this province, we all have the right and the responsibility to make sure that happens.

Part 10:

Summary Of Recommendations

2: The Environmental Registry

Ministries maximize the potential of the Environmental Registry to get public feedback by posting proposals early and often.

The Ministry of Environment and Energy continue to make technical and administrative improvements to the Environmental Registry.

3: Ministry Environmental Decisions

Environmental Registry Proposal Notices

Ministries assess and summarize the potential environmental effects of proposals, include this information in the Environmental Registry posting, and provide Regulatory Impact Statements for proposed regulations.

Ministries ensure that proposal notices avoid jargon and provide clear information about the purpose of the proposed decision and the context in which it is being considered.

Ministries ensure that proposal notices include a contact name, telephone and fax number, and information about where people can review written material on proposals.

Public Comments On Proposals

Ministries ensure that the public is not asked to comment on too many proposals all at once. Where this is not possi-

ble, ministries should extend comment periods to compensate for overlapping comment periods.

- 3.5 Ministries consider the complexity of an issue and the level of public interest when deciding on the length of comment periods.

Environmental Registry Decision Notices

- 3.6 Ministries ensure that decision notices contain sufficient information including where people can get a copy of the new policy, Act or regulation.

Public Consultation

- 3.7 Ministries recognize that posting proposals on the Environmental Registry is the minimum legal requirement and provide additional opportunities for public consultation whenever possible.

- 3.8 Ministries follow the process used by the Ministry of Environment and Energy for **Responsive Environmental Protection** in publicizing and inviting comment on major initiatives.

- 3.9 Ministries stop using omnibus-style legislation to reform Ontario's environmental laws and regulations, except for housekeeping matters.

- 3.10 Ministries assess and summarize the anticipated environmental consequences of planned cutbacks and transfer of responsibilities, make the information public and allow the public to comment.

Ministry of Environment and Energy

- 3.11 The Ministry of Environment and Energy establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.
- 3.12 The Ministry of Environment and Energy provide adequate resources to enforce its regulations and regularly report on enforcement activities.
- 3.13 The Ministry of Environment and Energy publish a plan for updating certificates of approval to ensure the new standards of the Three-Year Plan for Standard-Setting are met.
- 3.14 The Ministry of Environment and Energy conduct audits to ensure that all municipal drinking water supplies, especially smaller treatment plants and plants with historical compliance problems, undergo adequate routine testing.
- 3.15 The Ministry of Environment and Energy update its goals regarding acid rain, set clear emission and deposition targets for pollutants that contribute to acid rain, and establish control programs to meet those targets.

Ministry of Natural Resources

- 3.16 The Ministry of Natural Resources establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.
- 3.17 The Ministry of Natural Resources provide adequate resources to enforce its regulations and regularly report on enforcement activities.
- 3.18 The Ministry of Natural Resources assess and report on the effectiveness of the self-monitoring system with respect to aggregates and forest management in achieving environmental protection and make this information public annually.

Ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing

- 3.19 The ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing work

together to develop ways to ensure that up-front financial assistance is provided to participants in environmental decision making and hearings.

Ministry of Northern Development and Mines

- 3.20 The Ministry of Northern Development and Mines assess and report on the effectiveness of the self-certifying system for mine closure plans in achieving environmental protection.

Part 4: Reviews And Investigations

- 4.1 Ministries develop procedures for handling Applications that include an independent evaluation for situations where the Application involves previous decisions by local staff.
- 4.2 Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *Environmental Bill of Rights* and cite any additional factors in their decision such as limited resources required to carry out a Review. Whenever possible, valid concerns of the applicants should be addressed.
- 4.3 The Ministry of Environment and Energy, along with input from other ministries, follow through on its commitment to develop a comprehensive groundwater management strategy.
- 4.4 The Ministries of Environment and Energy and Consumer and Commercial Relations undertake environmental, scientific, economic and social research on the benefits and costs of adapting new refillable container technologies to Ontario's beverage industries and implementing a deposit-refund system for liquor containers, and make the information public.

Part 5: Instruments

- 5.1 The Ministry of Natural Resources immediately comply with the *Environmental Bill of Rights* by drafting a proposal

for classifying its instruments, provide full public consultation for the proposal, and implement it.

2 The Ministry of Environment and Energy assess how user-friendly the Environmental Registry becomes through the planned technical upgrade before deciding to strip the so-called "clutter" instruments from the Registry.

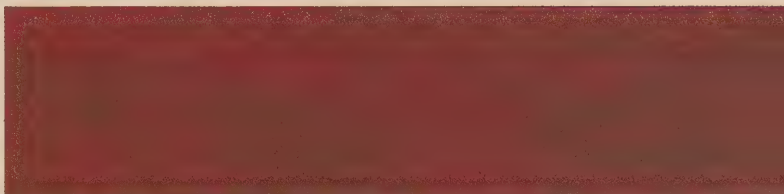
Part 7: Statements of Environmental Values

1 Ministries make every effort to apply the environmental values contained in their Statements of Environmental Values and integrate them into their Business Plans and other decision-making activities.

Part 8: Education Initiatives

3 Ministries show their commitment to their stated environmental values by educating staff, stakeholders and clients about the *Environmental Bill of Rights*.

4 The Ministry of Environment and Energy address the gap left by the elimination of the Ontario Environment Network Registry Coordinator position by ensuring that efforts to educate the public on the Environmental Registry continue and are well coordinated.





Part 11

The Environmental Bill of Rights encourages understanding of responsible environmental management. It promotes open dialogue and interaction among ministries, industry, environmentalists, citizen groups and employees to find the best environmental solutions.

Part 11:

Glossary of Terms

This Glossary includes words that are defined according to their meaning in the *Environmental Bill of Rights* and as they are used in this report.

acidic leachate

A corrosive liquid usually produced when water percolates through industrial or mining operation wastes.

A law passed by the Ontario Legislature.

aggregate

Gravel, sand, clay, earth, shale, stone and rock.

airshed management

The management of air quality within a geographical region.

appeal body

A board or tribunal to whom an appeal or application for leave to appeal is referred. For example, the Environmental Appeal Board hears most appeals on decisions made by the Ministry of Environment and Energy.

Application for Investigation

An *EBR* process that allows two Ontario residents to ask a ministry to investigate if they think someone is contravening a prescribed environmentally significant Act, regulation or instrument.

Application for Review

An *EBR* process that allows two Ontario residents to ask a minister to review existing policies, Acts, regulations or

instruments if they think the environment is not being protected, or to establish new policies, Acts or regulations to protect the environment.

aquifer

An underground water-bearing geological formation that is capable of transmitting water in sufficient quantities to serve as a groundwater supply.

biosolids

Treated municipal sewage sludge.

biota

The plant and animal life of a region or ecosystem.

certificate of approval

A permit issued by a ministry under a specific provision in an Act or regulation that allows the discharge of a limited volume of polluting substances, according to the terms and conditions set out in the permit.

conservation authority

An authority established under the *Conservation Authorities Act* to further the conservation, restoration, development and management of natural resources such as rivers, streams and public lands, within an area over which the authority is granted jurisdiction.

contaminated sites

Locations that have been polluted by activities involving substances that cause adverse environmental or health effects.

decision

A course of action resulting from the use of discretion by a prescribed Ontario government ministry.

EBR

See *Environmental Bill of Rights*.

ecosystem

A community of interdependent plants and animals together with the environment that they inhabit and with which they interact.

environment

The air, land, water, plant life, animal life and ecological systems of Ontario.

environmental assessment

An analysis, report or body of evidence relating to a specific project or development, that includes a description of the expected environmental impacts of the project, actions that could prevent or mitigate these environmental impacts, and alternative ways to carry out the project.

Note: The term "environmental assessment" has a more specific meaning in legislation such as the *Environmental Assessment Act*.

Environmental Bill of Rights (EBR)

A statute of Ontario, S.O. 1993, c. 28, proclaimed in Ontario in February 1994, which recognizes that the Ontario government has the primary responsibility for protecting, conserving and restoring the natural environment, but also recognizes that the people of Ontario have the right to participate in government decision making and to hold the government accountable for those decisions. The *EBR* provides a number of ways for the citizens of Ontario to participate in environmental decision making.

environmental decision making

The process by which decisions having a significant effect on the environment are made within Ontario government ministries subject to the *EBR*.

Environmental Registry

A computerized bulletin board established by the *EBR* to provide information about the environment to the public including the text of the *EBR*; general *EBR* information; the ministries' Statements of Environmental Values; summaries of proposed policies, Acts, regulations and instruments; notices of appeals of instruments and appeals of decisions; notices of court actions and final results; and Application forms for Reviews and Investigations.

environmentally significant

The description of types of government decisions that are subject to the requirements of the *EBR*. Factors to be considered in determining environmental significance include the measures required to prevent environmental harm, the geographic extent of environmental harm, and the public and private interests involved. Environmental significance is determined by looking at the potential effects of a proposal on the sustainable use of resources, the protection and conservation of biodiversity, pollution prevention and healthy communities.

furnace slag

An industrial by-product of the steel-making industry.

groundwater

Water that exists beneath the earth's surface, flows through geological formations such as sand layers, porous rock layers or fractured rock layers, and feeds wells.

hazardous waste

Waste that is harmful to health or the environment because of its physical characteristics, quantity or concentration; can either be toxic, corrosive, ignitable, reactive or infectious.

industrial effluent

Liquid waste produced by industry that is discharged into the environment.

instrument

Any document of legal effect issued under an Act, including a permit, licence, approval, authorization, direction or order.

instrument classification

The *EBR* requires certain ministries to prepare a regulation to classify proposals for instruments as Class I, II or III proposals according to their level of environmental significance, public notice and participation requirements, and the potential for public hearings to be held.

land use planning

Includes identifying problems, defining objectives, collecting information, analysing alternatives, and determining a course of action for the use(s) of land within a geographical area.

leave to appeal

The process under the *EBR* of requesting permission from an appeal body to appeal a ministry decision to grant an instrument.

muskegon

A freshwater sport fish.

Planning Act

A statute of Ontario, R.S.O. 1990, c. P.13, as amended. The *Planning Act* was amended significantly by Bill 163, which received Royal Assent on December 8, 1994. The *Act* was significantly amended again, by Bill 20, which received Royal Assent in 1996.

policy

A program, plan or objective and includes guidelines or criteria used in making decisions about the issuance, amendment or revocation of instruments.

prescribed (ministries, Acts, regulations or instruments)

The various ministries, Acts, regulations or instruments that are specified in the regulations made under the *EBR* and to which the provisions of the *EBR* apply.

public resource

Air, public water, unimproved public land, public land used for recreation, conservation, resource extraction or management, and the plant and animal life and/or ecosystems associated with air, public water or public land.

regulation

A legislative regulation, rule or order made or approved under an Act and having the force of law when in effect.

Regulatory Impact Statement

A statement that may be prepared by a ministry to permit more informed public consultation on a proposed regulation. It includes a statement of the objectives of the proposal; a preliminary assessment of the environmental, social and economic consequences of implementing the proposal; and an explanation of why the environmental objectives of the proposal would be achieved by making, amending or revoking a regulation.

reporting period

The period of time — January 1, 1996 to December 31, 1996 — covered by this report.

sauger

A freshwater sport fish.

silt

Loose sedimentary material that often chokes or obstructs waterways and rivers.

SEV

See Statement of Environmental Values.

Statement of Environmental Values (SEV)

A statement, required by the *EBR*, that explains how the purposes of the *EBR* are to be applied when environmentally significant decisions are made in the ministry and how consideration of the purposes of the *EBR* should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision making in the ministry.

sulphide tailings

By-product of mining operations that use sulphur to process minerals.

sustainability

The concept that economic development must take full account of the environmental consequences of economic activity. Sustainability of the environment is achieved through the use of resources that can be replaced or renewed and therefore are not depleted.

voluntary code of practice

A set of standardized, written commitments agreed to by one or more individuals or organizations that is designed to influence or control behaviour, and is applied consistently by those who adopt it. A voluntary code is not legally enforceable.



Key To Abbreviations And Acronyms

EBR	<i>Environmental Bill of Rights</i>
ECO	Environmental Commissioner of Ontario
OMAFRA	Ministry of Agriculture, Food and Rural Affairs
MCzCR	Ministry of Citizenship, Culture and Recreation
MCCR	Ministry of Consumer and Commercial Relations
MEDTT	Ministry of Economic Development, Trade and Tourism
MOEE	Ministry of Environment and Energy
MOH	Ministry of Health
MOL	Ministry of Labour
MBS	Management Board Secretariat
MMAH	Ministry of Municipal Affairs and Housing
MNR	Ministry of Natural Resources
MNMD	Ministry of Northern Development and Mines
MTO	Ministry of Transportation
SEV	Statement of Environmental Values



Part 12

Appendices

Application, Topic, Ministry	Issues	Outcome	ECO Comments
R0333: Need for groundwater resources policy (MOEE)	The applicants applied for a Review of the need for a co-ordinated and scientifically based groundwater resources policy statement. They stated concern that community development is being approved without first doing an adequate evaluation of groundwater supply, and that aquifers are being polluted.	No Review by MOEE. MOEE indicated that it was already undertaking an integrated strategy for the management and protection of groundwater in conjunction with other ministries, and therefore a separate Review under the <i>EBR</i> would not be conducted.	MOEE's rationale for not conducting a Review was reasonable. The ECO will continue to monitor progress of the Ministry's groundwater strategy.
R0334: Classification of chromium-containing materials as hazardous waste (MOEE)	The applicants requested that Ontario Regulation 347 under the <i>Environmental Protection Act</i> be reviewed. Under the current regulation, a waste is considered toxic if the total chromium extracted from it during a leachate test exceeds 0.05 mg/L. The applicants said the legislation should differentiate between toxic and non-toxic forms of chromium. Treating a non-toxic material as hazardous places an unnecessary economic burden on industry.	MOEE will conduct a Review. MOEE indicated that Regulation 347 will be reviewed in the broader context of overall program streamlining.	The ECO will continue to monitor the progress of this Review.
R960001: Need for intervenor funding legislation (MOEE)	The applicants requested that MOEE enact and proclaim new permanent intervenor funding legislation. They said this legislation is needed because the existing statute, the <i>Intervenor Funding Project Act (IFPA)</i> , expired on April 1, 1996. The applicants said a lack of statutory funding will have a negative effect on the soundness, credibility and fairness of decisions made by the Energy Board, Environmental Assessment Board and the Joint Board.	MOEE decided not to conduct a Review, noting that the Ministry had already undertaken a comprehensive internal review of the need for such legislation. The Ministry noted that the decision resulting from that review would be made available on April 1, 1996. On March 28, 1996, MOEE placed an information notice on the Environmental Registry stating that the <i>IFPA</i> would be permitted to sunset on March 31, 1996.	The Ministry was already conducting an internal review. It is unclear whether any public input was considered. The Ministry's decision not to continue intervenor funding should have been subject to an open public review.
R960004: Lead contamination from lead smelting facility. (MOEE)	The applicants requested that 27 certificates of approval (C of As) for a blast furnace previously used for lead smelting be revoked. The applicants said the current C of As did not adequately protect the natural environment in the area (a residential neighbourhood in Metro Toronto) from lead contamination. The applicants said if the company wanted to resume lead smelting on the site, it should be required to submit an application for a new C of A.	MOEE determined that a Review was not needed as the Ministry had already revoked 15 C of As related to the lead smelter, and as a result the lead smelting operation was no longer approved. These C of As were revoked after the Ministry had received the Application for Review.	Although the Ministry did not conduct a Review, the applicants were successful in having the certificates of approval revoked.
R960006: Noise, odor and traffic from waste transfer site (MOEE)	The applicants requested a Review of a provisional certificate of approval for a waste transfer site in Metro Toronto. They said that the C of A was not consistent with the Ministry's SEV; the public consultation on the decision to issue the C of A was inadequate, and that there was new social and economic evidence showing the waste transfer site was not required. They were concerned about odor, noise and traffic issues related to the site.	MOEE decided not to conduct a Review, noting that there was no evidence showing new social and economic information that could bring into question the issuance of the C of A. It also noted that extensive public consultation had been conducted.	The Ministry's rationale for not conducting the Review is reasonable. Although there was disagreement between the applicants and the Ministry on the adequacy of the public consultation, there did appear to be public consultation consistent with the <i>EBR</i> .

Application, Topic, Ministry	Issues	Outcome	ECO Comments
R960007: Management of lake as a walleye fishery (MNR)	The applicants requested a Review of the decision to manage Buckshot Lake (in eastern Ontario) as a warm water walleye fishery. They said the lake should be managed as a lake trout fishery, which would make it subject to stricter development controls. They said the Ministry based its decision to manage the lake for walleye on insufficient evidence, and provided evidence that lake trout are reproducing naturally in the lake.	MNR decided not to conduct a Review, citing a number of reports and studies that support its decision to manage the lake for walleye. The Ministry also noted there was public consultation on the Fisheries Management Plan for the area, which was developed in 1987.	The Ministry's rationale for not conducting the Review was weak. Many of the reports and studies cited to support its decision were the same reports the applicants were concerned about. Many of the applicants' concerns were not addressed. MNR also did not address evidence provided by the applicants.
R960008: Quarrying in a provincially significant wetland (MNR)	The applicants requested a Review of a licence issued under the <i>Aggregate Resources Act</i> . They were concerned about plans by the company to divert a creek and to quarry in a Class II wetland on Lake Ontario. They said the licence does not allow quarrying and that the company would need a separate permit to quarry in the wetland.	MNR decided not to conduct a Review because it pertained to an instrument (a quarry licence) that was not prescribed under the <i>EBR</i> .	MNR has not yet classified its instruments, although the <i>EBR</i> requires that this be done as soon as reasonably possible after April 1, 1996. The fact that MNR has not classified its instruments is blocking the rights of Ontario residents to apply for Reviews relating to MNR instruments.
R960009, R960010: Reopening of mining claim staking in Temagami (MNR and MNDM) (Also sent to MOEE: see R960011)	The applicants requested a Review of MNR and MNDM's decision to reopen lands for mining in Temagami without an environmental assessment of the Temagami land use strategy, and in the absence of appropriately drafted regulations under the <i>Mining Act</i> . Although MNDM had begun developing regulations (designed to minimize damage caused during staking of mining claims in a particularly sensitive area of Temagami), the applicants were concerned that they would not be in place before the area was to reopen for staking.	MNR and MNDM submitted a joint rationale for their decision not to conduct a Review. The ministries stated that environmental assessments of land use plans are not required by the <i>Environmental Assessment Act</i> . Regarding the regulations under the <i>Mining Act</i> , the ministries informed the applicants that, shortly before the Application for Review was received by the ministries, they deferred the reopening of the area until the new regulations were in place.	MNR and MNDM provided a reasonable rationale for not conducting a Review. To its credit, MNDM deferred the reopening of the area of concern until the regulations are promulgated under the <i>Mining Act</i> , even before the Application was received. It appears that one of the principal concerns of the applicants was addressed by the Ministry's action.
R960011: Reopening of mining claim staking in Temagami (MOEE)	The applicants requested a Review of MNR and MNDM's decision to reopen lands for mining in Temagami without an environmental assessment of the Temagami land use strategy, and in the absence of appropriately drafted regulations under the <i>Mining Act</i> .	No Review by MOEE. MOEE returned the Application to the ECO, stating that the issues raised do not fall under the jurisdiction of the Ministry.	The ECO will review this Application in 1997.
R960012: Downgrading of Areas of Natural and Scientific Interest (MNR)	The applicants requested a Review of MNR's guidelines pertaining to Areas of Natural and Scientific Interest. They said the Ministry is downgrading and eliminating these areas in an ad-hoc manner without clear criteria.	The Application was received late in 1996. In January 1997 MNR decided not to conduct a Review.	The ECO will review this Application in 1997.
R960013: Adverse health effects from flare gases (MOEE)	The applicants said they and their livestock are suffering adverse effects from flare gases from a heavy water plant for the nuclear industry. They requested the C of As for the hydrogen flare system and hydrogen sulphide recovery system be amended to include additional conditions related to operating procedures for the flare stack.	The Application was received late in 1996. In February 1997, MOEE decided not to conduct a Review.	The ECO will review this Application in 1997.

Application, Topic, Ministry	Issues	Outcome	ECO Comments
I0016: emissions from asphalt plant allegedly causing health problems (MOEE)	The applicants said that a company operated an asphalt plant without a C of A in 1992. They also said the company was operating an oil-fired asphalt plant with a C of A that only allows the use of natural gas fuel. The applicants submitted evidence showing that the company was operating the plant under certain wind directions, which is prohibited in the C of A. The applicants did not, however, clearly request an Investigation of this issue.	MOEE decided not to conduct an Investigation, noting the company was charged in 1994 for operating the asphalt plant without a C of A. It indicated that burning oil is permitted under the current C of A. MOEE also noted that, since the Application did not specifically request an Investigation of the operation of the plant under certain wind conditions, the Ministry did not comment on this in its response to the Application. It did note that the company had been charged in 1995 with failing to comply with conditions of the C of A related to operation of the plant under certain wind conditions.	The Ministry's reasons for not investigating were reasonable. The applicants' concern about operation of the plant during certain wind conditions appears to have been addressed, as MOEE laid charges on the company shortly before the Application was submitted.
I960002: allegations that a landfill was contravening the <i>Environmental Protection Act</i> (EPA) and its C of A (MOEE)	The applicants were neighbours of a landfill in southwestern Ontario that they said was operating outside the boundaries of its C of A; accepting more waste than allowed in its C of A; and contravening other conditions of its C of A.	MOEE investigated and concluded that the company was in compliance with the EPA and the conditions of its C of A.	MOEE assigned the Investigation back to the same District Office involved in regulating the landfill. The Ministry relied on its past inspections and the company's data, instead of following up on the applicants' evidence. This Investigation should not have been done by the District Office involved in past decisions.
I960003: alleged failure by a company to comply with Ontario's 3Rs regulations under the <i>Environmental Protection Act</i> (MOEE)	The applicants said the company was contravening the 3Rs regulations by not performing a waste audit, not implementing a waste reduction work plan and failing to have a consistent plan for source separating waste. The applicants provided evidence that the company had been made aware of the regulatory requirements, but had not taken action.	MOEE's Investigation revealed that the company had not complied with requirements regarding waste audits and waste reduction workplans. MOEE also discovered that the company did not have a C of A for air emissions, and had failed to register as a generator of liquid industrial waste under Ontario Regulation 347. MOEE and the company agreed to a deadline for submitting the applications. In addition, MOEE issued violation notices to the company.	In this case, a clear, focused Applicant received a thorough, appropriate response from the Ministry, and resulted in improved protection of the environment.
I960004: alleged contravention of the <i>Lakes and Rivers Improvement Act</i> in the construction of a dam (MNR)	The applicants alleged that MNR, MOEE and the owners of a power company contravened the <i>Lakes and Rivers Improvement Act</i> when building a dam near Nipigon, Ontario in the early 1990s. Their concerns included erosion and interference with fish spawning.	No Investigation by MNR. MNR stated that the allegations had been thoroughly investigated in 1994 and 1996 by MNR, and in 1994 by the Ombudsman. The MNR and MOEE have already required the owners of the dam to fix many of the problems identified in the Application. In addition, the applicants provided no new evidence of environmental harm to warrant a new Investigation.	The Ministry's rationale for not conducting a new Investigation was valid.

Application, Topic, Ministry	Issues	Outcome	ECO Comments
1960005: alleged contravention of the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> from runoff from a closed iron ore mine (MOEE) (Also sent to MNR; see 1960011)	The applicants alleged that a closed iron ore mine in Temagami continues to discharge contaminants (primarily heavy metals) into the environment, impairing surface and groundwater and fish habitat.	Investigation conducted by MOEE. MOEE conducted sampling at seven sites and the samples were tested for heavy metals, pH and conductivity. The Ministry concluded that the concentration of contaminants was within the guidelines set out in the Mine Closure Plan finalized in 1995, and that the water quality had improved over time.	The ECO will review this Application in 1997.
1960006: alleged contravention of s.14 of the <i>Environmental Protection Act</i> through excessive traffic in residential area (MOEE)	The applicants said that the local municipality allows an excessively high volume of traffic to be routed onto their street (in a residential area of Metro Toronto). They said the municipality had contravened s.14 of the <i>Environmental Protection Act</i> and s.6 of Ontario Regulation 346.	MOEE decided not to investigate, noting that, in its opinion, the municipality was not responsible under s.14 of the <i>Environmental Protection Act</i> nor under s.6 of Ontario Regulation 346 for noise and emissions from private individuals' vehicles. The Ministry stated that the management of traffic flow by the municipality could not be considered to violate these provisions.	MOEE's response did not give any basis for the Ministry's legal opinion that the municipality was not responsible under s.14 of the <i>EPA</i> or s.6 of Ontario Regulation 346 for noise and emissions from private vehicles. The Ministry's reasons not to investigate may have been valid, but the reasons given to the applicants were inadequately explained.
1960007: alleged contravention of <i>Crown Forest Sustainability Act</i>; inadequate public consultation on a Contingency Forest Management Plan (MNR) (Also sent to MOEE; see 1960008 below)	The applicants said that MNR provided public review periods for a Contingency Forest Management Plan for the Black Sturgeon Forest that were shorter than legally required and that MNR provided confusing and wrong information to the public. The legal requirements are set out as part of the Conditions of the Class Environmental Assessment for Timber Management. The applicants presented seven specific concerns, all relating to inadequate public consultation on the Contingency Plan.	MNR decided not to investigate, noting that the alleged contravention was not likely to cause harm to the environment, and was not serious enough to warrant an Investigation. While MNR agreed that wrong information was given to the public, MNR noted that this error was immediately corrected. MNR also noted the unusual circumstances surrounding the alleged contravention (documents being destroyed in a fire and the 1996 civil service strike), and indicated that this combination of unusual circumstances was unlikely to be repeated. MNR determined that the public still had a reasonable ability to comment within the minimum time frame and that all comments received were considered.	Both MNR and MOEE dealt with this Application appropriately and made reasonable decisions. Ministries should, however, make every effort to provide clear, accurate information along with adequate comment periods when consulting the public on specific decisions. Unusual circumstances that threaten to restrict public consultation may require creative measures by Ministry staff to allow adequate opportunities for public involvement.
1960008: alleged contravention of <i>Environmental Assessment Act</i>; inadequate public consultation on a Contingency Plan (MOEE) (Also sent to MNR; see 1960007 above)	The applicants said that MNR provided public review periods for a Contingency Forest Management Plan for the Black Sturgeon Forest that were shorter than legally required and that MNR provided confusing and erroneous information to the public. The legal requirements are set out as part of the Conditions of the Class Environmental Assessment for Timber Management. The applicants presented seven specific concerns, all relating to inadequate public consultation on the Contingency Plan.	MOEE decided to investigate one of the seven issues raised by the applicants. MOEE concluded that interested groups and individuals did not get at least 15 days of notice to inspect the Contingency Plan before operations were scheduled to proceed. However, MOEE then described four mitigating factors and decided not to pursue that matter further.	Both MNR and MOEE dealt with this Application appropriately and made reasonable decisions. Ministries should, however, make every effort to provide clear, accurate information along with adequate comment periods when consulting the public on specific decisions. Unusual circumstances that threaten to curtail public consultation may require creative measures by ministry staff to allow adequate opportunities for public involvement.

Application, Topic, Ministry	Issues	Outcome	ECO Comments
1960009: alleged burning of waste in a wood-burning stove (MOEE)	The applicants said the owners of a garage located adjacent to the applicants' house were illegally burning waste in a wood-burning stove. They said the smoke was causing damage to their property and surrounding trees.	The Ministry decided not to investigate stating that an investigation of the alleged contravention had already been completed. The Ministry inspections (which were conducted in 1995 and 1996, prior to the submission of the Application) revealed that only clean wood was being burned in the wood-stove, and did not reveal smoke damage to the house.	The Ministry's reasons for not conducting the Investigation were reasonable, although the Ministry did not address the applicants' evidence that damage to their property had occurred.
1960010: alleged de-watering of a stone quarry in contravention of a Permit to Take Water (MOEE)	The applicants said de-watering of a stone quarry adjacent to their farm was interfering with the water level in the aquifer. They alleged that the aggregate company that was de-watering the quarry failed to submit a water management plan, failed to submit reports to the MOEE when changes were made to the dewatering operation, and failed to monitor water levels as required in the terms and conditions of the Permit to Take Water.	Investigation conducted by MOEE and completed in February 1997.	The ECO will review this Application in 1997.
1960011: alleged contravention of Fisheries Act, by runoff from a closed iron ore mine (MNR)	The applicants said that a closed iron ore mine in Temagami continues to discharge contaminants (primarily heavy metals) into the environment, impairing surface and groundwater and fish habitat.	MNR decided to investigate. At the end of the reporting period, MNR had not yet completed the Investigation.	The ECO will review this Application in 1997.
1960012: alleged contraventions of the Public Lands Act and the Lakes and Rivers Improvement Act by proposing to permit development of a campground (MNR) (Also sent to MOEE; see 1960013)	The applicants said MNR violated the <i>Public Lands Act</i> and the <i>Lakes and Rivers Improvement Act</i> . The allegations related to the Ministry's proposal to issue a land use permit for a private campground on Munro Lake in the District of Cochrane.	This Application was submitted late in 1996. At the end of the reporting period, MNR had not yet decided whether it would conduct an Investigation.	The ECO will review this Application in 1997.
1960013: alleged contraventions of the Environmental Protection Act by proposing to permit development of a campground (MOEE) (Also sent to MNR; see 1960012)	The applicants said MNR violated the <i>Environmental Protection Act</i> . The allegations related to the MNR's proposal to issue a land use permit for a private campground on Munro Lake in the District of Cochrane.	This Application was submitted late in 1996. In January 1997, MOEE decided not to investigate.	The ECO will review this Application in 1997.

Application, Topic, Ministry	Issues	Outcome	ECO Comments
1960014: alleged contravention of the <i>Lakes and Rivers Improvement Act</i> and the federal <i>Fisheries Act</i> by altering a river bank. (MNR) (Also sent to MOEE; see 1960015)	The applicants said their neighbours straightened a river bank by adding outside fill to their property in 1994. This allegedly caused increased silting, erosion and flooding on the applicants' property and destroyed fish habitat.	MNR decided to investigate. At the end of the reporting period, MNR had not yet completed the Investigation.	The ECO will review this Application in 1997.
1960015: alleged contravention of the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> by altering a river bank. (MOEE) (Also sent to MNR; see 1960014)	The applicants said their neighbours straightened a river bank by adding outside fill to their property in 1994. This allegedly caused increased silting, erosion and flooding on the applicants' property and destroyed fish habitat.	This Application was submitted late in 1996. In January 1997, MOEE decided not to investigate.	The ECO will review this Application in 1997.
1960016: alleged operation of a gravel pit in contravention of the <i>Aggregate Resources Act</i> (MNR)	The applicants said MNR approved a gravel pit application under the <i>Aggregate Resources Act</i> that did not meet the requirements of the Act. They said the site plan failed to show a well and a pond on the property; claimed incorrectly that a Provincially Significant Area of Natural and Scientific Interest had been downgraded; failed to identify groundwater on the site; and allows the destruction of a significant natural feature.	This Application was submitted late in 1996. In January 1997, MNR decided not to investigate.	The ECO will review this Application in 1997.
1960017: alleged approval of activities in contravention of sections of the <i>Environmental Assessment Act</i> (MOEE)	The applicants said MNR approved construction of a road, harvesting of trees, clearing of vegetation, construction of parking facilities and construction of a boat ramp without following the public participation procedures set out in MNR's Class Environmental Assessment for Small Projects.	This Application was submitted late in 1996. In February 1997, MOEE decided not to investigate.	The ECO will review this Application in 1997.

Appendix C

The work of the Environmental Commissioner of Ontario was enhanced by the hard work and dedication of the following people during 1996:

Karen Beattie, Legal Analyst

Robert Blaquière, Bilingual Public Information Officer

Maureen Carter-Whitney, Legal and Policy Officer

Beverley Dottin, Administrative Assistant

Manik Duggar, Education Officer

Dianne Elliott, Education Coordinator

Modesta Galvez, Case Flow, Records and Systems Manager

Averil Guiste, Communications Assistant

Elaine Hardy, Policy and Decision Analyst

Adrienne Jackson, Communications Coordinator

Joel Kurtz, Senior Policy Advisor

Therese Lamie, Librarian

Peter Lapp, Executive Assistant

Nina Lester, Legal and Policy Officer

Derwin Mak, Auditor

David McRobert, Senior Policy Analyst/In-House Counsel

Enza Ragone, Public Information and Education Officer

Cynthia Robinson, Human Resources, Finance and Administration Coordinator

Ellen Schwartzel, Research and Resource Centre Coordinator

Lisa Shultz, Policy and Decision Analyst

The following individuals assisted on short- and long-term projects:

Christine Beckerman, Database Developer

Ann Cox, Library Assistant

Dharlene Dandy-Valeda, Library Assistant

Cathy De Rubeis, Researcher

Susan Griffin, Library Assistant

Dale Hamilton, Education Officer

Richard King, Education Officer

Appendix D

Opening The Doors To Better Environmental Decision Making Environmental Commissioner of Ontario 1994-1995 Annual Report

Summary of Recommendations

Statements of Environmental Values

1. All ministries recognize the educational potential of the SEVs and use them to generate understanding among ministry staff and the public about the relationship between the ministries' mandates and their environmental values.
2. All ministries define environmental protection and sustainability goals and objectives for their daily operations either in the SEVs or in a separate but complementary public document.
3. All ministries explore ways to strengthen monitoring and reporting of key environmental parameters relevant to their mandates.

The Environmental Registry

1. The Ministry of Environment and Energy designate a single authority to operate (including both administrative and technical operations) the Environmental Registry, and
 - a. resolve the Environmental Registry's technical problems by upgrading the entire system or by upgrading the current software;
 - b. upgrade the Environmental Registry platform so the public can access and use its information as a database.
2. All ministries develop and publish standard procedures releasing the full text of proposals to the public. Ministry staff should make every effort to accommodate those who live far from district and regional offices.

All ministries continue to improve the quality and value of the information posted on the Registry by:

clearly and accurately summarizing proposals, giving enough information, identifying additional public consultation opportunities, and explaining how comments affected the decision;

ensuring all Registry postings are well organized, clearly written, proofread and that technical information is explained; and

ensuring all entries include ministry contact telephone and fax numbers.

All ministries post on the Environmental Registry annual summaries of all environmentally significant activities, including the number of policies, Acts, regulations and instruments posted, and the disposition of Applications for Review and Investigation.

Ministry Environmental Decision Making

All ministries tailor the environmental significance guidelines to their own particular operations, provide adequate staff training on the application of the guidelines, and ensure determination of environmental significance is trackable and reproducible.

All ministries integrate SEV consideration into existing decision-making tracking methods, explicitly apply SEV consideration to all environmentally significant decisions (including decisions on instruments), and ensure related documentation is part of the ministry file.

All ministries extend the 30-day minimum Registry posting time for complex, new or amended proposals to enable informed public comment.

The Ministry of Environment and Energy develop criteria for determining emergency exceptions for landfill sites and make those criteria public through the Environmental Registry.

Reviews And Investigations

1. The Ministry of Environment and Energy assess the occurrence of trichlorethylene in Ontario's drinking water supplies using existing data from its Drinking Water Surveillance Program. MOEE should then decide if further action is required, such as more intensive sampling of water supplies that appear to be at risk. Depending on the magnitude of the risk, MOEE should consider a more stringent guideline on an interim basis until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.
2. The Ministry of Environment and Energy assess the needs of the approximately 40 surface water treatment plants in Ontario that are potentially vulnerable to *Cryptosporidium*. For plants that are most vulnerable, planning for the installation of filtration should proceed, unless it can be demonstrated to be unnecessary. The Ministry of Environment and Energy and the Ministry of Health should also consider installing *Cryptosporidium* detection methods at the most vulnerable plants to provide early warning of a breakout.
3. The Ministry of Environment and Energy verify the status of reviews by the Federal-Provincial-Territorial Subcommittee on Drinking Water and other scientific panels before citing such reviews as a reason to decline Applications for Review under the *Environmental Bill of Rights*.
4. The Ministry of Environment and Energy address public concerns about air pollution from smokestacks by focusing more resources on resolving the underlying factors within its mandate, including outdated Certificates of Approval, inadequate monitoring of sources, and regulations that focus too heavily on short-term concentrations of pollutants and not enough on long-term loadings to the environment.
5. The Ministry of Environment and Energy and the Ministry of Municipal Affairs and Housing, in their role of reviewing and approving municipal land use plans, estab-

lish and apply guidelines to help prevent future land use conflicts caused by air emissions.

6. Ministries cooperate to review and upgrade Ontario's groundwater management framework. These ministries would include the ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation. As a first step, ministries should compile current, accurate information on groundwater data, as well as statistics on inspections of potential contamination sources and enforcement of relevant legislation. This information should be made public.
7. The Ministry of Environment and Energy, working with municipalities, focus more efforts on minimizing groundwater and other environmental impacts of existing landfill operations. These efforts should include a shift in focus from merely monitoring leachate plumes in groundwater to an increased emphasis on preventing such contamination. A first step might be a review of existing provincial rules and guidelines governing landfill operations. Such a review should involve the public, and reflect the regional diversities of waste disposal in Ontario.
8. The Ministry of Environment and Energy announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently under way are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of Environment and Energy should begin to enforce the refillable soft drink container regulations under the *EPA*.
9. Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *Environmental Bill of Rights* and cite any additional relevant factors in their decision such as limited resources required to carry out a Review. Whenever possible, valid concerns of the applicants should be addressed.
10. Ministries follow the lead of the Ministry of Environment and Energy whose procedures for the receipt and handling

of Applications for Review and Investigation are exemplary.

Instrument Classification

1. Ministries complete their instrument classification process and consult with the public on classification proposals and amendments to classification regulations.
2. Ministries determine those high-volume instruments that are likely to produce cumulative environmental effects, and post annual statistics for these non-classified instruments on the Environmental Registry.

Education Initiatives

1. All ministries increase their efforts to publicize the *Environmental Bill of Rights*, and particularly the Environmental Registry, to their staff and stakeholders.



Center for Environmental and Estuarine Science

Center for Environmental and Estuarine Science

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Environmental Commissioner of Ontario

ANNUAL REPORT
1997



Open Doors - Ontario's Environmental Bill of Rights

Environmental
Commissioner
of Ontario



Commissaire à
l'environnement
de l'Ontario

Eva B. Ligeti
LL.B., LL.M.
Commissioner

Eva B. Ligeti
LL.B., LL.M.
Commissaire

April 1998

The Honourable Chris Stockwell
Speaker of the Legislative Assembly
Room 180, Legislative Building
Legislative Assembly
Province of Ontario
Queen's Park

Dear Mr. Speaker:

In accordance with section 58 of the *Environmental Bill of Rights, 1993*, I am pleased to present the 1997 annual report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

Sincerely,

A handwritten signature in black ink that reads "Eva Ligeti".

Eva Ligeti
Environmental Commissioner of Ontario

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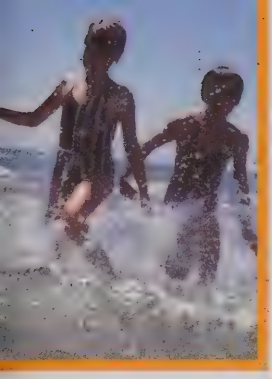


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A Message from the Environmental Commissioner of Ontario

The *Environmental Bill of Rights (EBR)* declares that the people of Ontario recognize the inherent value of the natural environment and their right to a healthful environment. It says that the government has the primary responsibility to achieve these goals, and that people should have the means to ensure they are achieved. As Environmental Commissioner of Ontario, I report to the Legislative Assembly of Ontario on how well the government is achieving its environmental goals.

This is my third Annual Report. In the past three years, a growing number of people, including members of industry associations, environmental public interest groups, cottagers and others, have called or written to me and my staff to alert us to their environmental concerns and to provide feedback on my Annual Reports. The efforts of Ontario residents who use the *EBR* reflect their deep commitment to a healthful and sustainable natural environment. Throughout this report, you will find examples of how people across the province used their *EBR* rights to influence decisions – from Newmarket and Peterborough and Guelph to Black Bay Peninsula and the Rossport Islands on Lake Superior.

Over the years I have met with staff in many ministries who have devoted their careers to building important environmental programs. In the past year, these staff members have seen the loss of both experienced colleagues and program resources. Yet ministry staff remain dedicated to providing quality services in the public interest. And they continue to be cooperative and helpful to me and my staff as we review ministry decisions, as required by the *EBR*.

The Ministry of the Environment (MOE) has continued to support the *EBR* within the ministry, in its dealings with other ministries, and in particular, in its support and expansion of the capacity of the Environmental Registry. MOE has continued to spend resources on Registry upgrades, and the staff of MOE's Environmental Bill of Rights Office have worked tirelessly to facilitate the implementation of the *EBR*. Their efforts are reflected in many of the reviews contained in this report.

I am pleased to report that in 1997 the Ministry of Natural Resources (MNR) made substantial progress in its compliance with the *EBR*, thanks to the efforts of ministry staff. In this report you will find many instances where MNR has used the Environmental Registry both to solicit public comments and to inform people of its response to those comments. This Annual Report focuses attention on a number of MNR natural resource issues and proposals, including a major overhaul of how the ministry manages natural resources on Ontario's public lands and how they are allocated to uses such as logging, tourism and conservation. The decisions the Minister of Natural Resources is making in this regard will have long-term effects on how future governments manage natural resources in Ontario. I also draw attention to the possible sale of some of Ontario's Crown lands, with little or no public notice or public input.

Overall, environmental health continues to be a very low priority for the ministers of this province. Ministry business plans indicate that ministers are withdrawing from their environmental commitments. More and more, they are failing to integrate their responsibility for the environment into their core business plans and into their social, economic and scientific considerations. I remind these ministers that a healthful environment is an important part of a healthy economy and a healthy society.

Recognizing the acknowledged and direct link between air quality and people's health, I paid particular attention in 1997 to decisions made by ministers that affect air quality. I found that "clean air" commands only a small portion of MOE's environmental protection budget, even though the Minister of the Environment has said that clean air is a major ministry focus. I found that MOE's "Smog Plan" relies on asking industry to cut emissions voluntarily and fails to provide details for fully half of its own stated goals. Moreover, the Smog Plan does not include any province-wide initiative to upgrade existing industrial approvals in order to incorporate proposed new improved standards. It also does not factor in changes announced by Ontario Hydro to move from nuclear to fos-

oil fuels. And while road vehicles are the number one source of smog-causing pollution, decisions made by other ministers, such as the Minister of Transportation and the Minister of Municipal Affairs and Housing, have had no apparent regard for air pollution, failing to integrate the effects of their decisions on the environment. I found

that in the U.S., new standards set by the *Clean Air Act* will be mandatory in every state, while in Ontario, our more stringent, but unenforceable guidelines for inhalable particulates are regularly exceeded in cities such as Windsor, Hamilton, Toronto, Sault Ste. Marie and London. Ontario's focus needs to change from one of granting regulatory relief for polluters to improving its commitments to the environmental health of its residents and the natural environment.

In the face of the announcement in 1997 that State of the Environment reporting

in Ontario would be discontinued, I looked at a number of government environmental monitoring programs. I wanted to determine whether these programs are giving Ontario residents the information they need to understand whether progress is being made in protecting our air, water, forests and wildlife. I found that many well-established monitoring programs were being restructured to cope with reduced resources. I also found that significant environmental information is not being collected, or if it is being collected, is not being analysed and reported. In some cases, such as the targets for air quality, the monitoring data to assess progress to the targets are not being kept. Some programs, such as the Hamilton and Windsor air quality monitoring programs, are not directly related to any environmental targets. In other cases, monitoring

information is available, but it is not being used to improve the environment. In one of my major recommendations, I ask that when ministers state environmental targets, they also make a commitment to support their plans with effective monitoring programs that assess the actual environmental results, and that they promptly report these results to the public and to decision-makers so they can be acted upon.

In 1997, I received an application concerning the fire at the Plastimet recycling facility in Hamilton. I found that the Ministry of the Environment failed to explain why the Plastimet operation was considered to be exempt from regulatory requirements; the ministry cited no evidence in support of its contention that a certificate of approval is not required for Plastimet's activities. Despite the recommendation of the Ontario Fire Marshal to strengthen regulatory controls on recycling operations, MOE does not agree this is needed. I will monitor whether the ministry has adequate safeguards in place to ensure that exemptions from regulatory requirements do not result in increased risk to public safety and the environment.

In 1997, when provincial ministries used the Environmental Registry and complied with the *EBR*, members of the public benefitted from the increased opportunities to comment on environmental proposals. At the same time, there was a host of important new proposals that required close scrutiny: revisions to laws, new policies, new approaches such as voluntary measures and standardized approvals, the impacts of reduced ministry resources, and the diminished regulatory role of provincial ministries. In the end, my reviews of these proposals revealed that a host of changes does not necessarily advance the goals of the *EBR* – namely, to protect Ontario's environment. Thus, in this 1997 Annual Report, I have made some recommendations for improvement.



Eva Ligeti
Environmental Commissioner of Ontario





Executive Summary

Part 1 – Introduction

The *Environmental Bill of Rights (EBR)* gives the people of Ontario the right and the means to become involved in ministry decisions that affect the environment. The *EBR* calls for the appointment of an Environmental Commissioner of Ontario to review and report annually on how ministries comply with the law. This is the third Annual Report of the Environmental Commissioner of Ontario (ECO), and covers the period from January 1, 1997, to December 31, 1997.

Part 2 – The Environmental Registry

The Environmental Registry has proven to be a cost-effective way of opening the door to the decisions ministers make about the environment. The Registry is a computer bulletin board that provides people with electronic access to environmentally significant proposals and decisions, court actions and appeals. During 1997, people in Ontario continued to make good use of the Environmental Registry, with information downloads averaging more than 4,000 a month.

The Environmental Bill of Rights Office at the Ministry of the Environment (MOE), is continuing to upgrade the Registry and has now successfully mirrored the Registry on its Internet Web site. This will allow most users to download the full text of proposals for most policies, acts and regulations. A full migration of the Registry to an Internet Web site is expected in spring 1998, giving users full access to a complete database of all Registry postings.

I commend the Ministry of the Environment for investing the time and resources needed to upgrade the Registry.

Part 3 – Ministry Environmental Decisions

In an improvement over past years, some ministries are now posting more proposals and decisions on the Environmental Registry, thus giving recognition to the values of transparency and accountability embodied in the *EBR*. Two new laws, more than 20 regulations and 15 policies were posted on the Registry for extended periods of comment during 1997.

Trends in Ministry Decision-making

In my 1996 Annual Report, I noted that the scope and pace of change to the environmental regulatory system had been staggering. In 1997, ministries continued, at a reduced pace, to reshape the legal and regulatory regime related to environment. I estimate that amendments are pending or have been made to almost half the statutes and regulations prescribed under the *EBR*.

This year I reviewed in depth many of the important policies posted on the Environmental Registry in 1997. This includes the policies posted by MOE related to air pollution and the proposals posted by the Ministry of Natural Resources (MNR) dealing with the management of Ontario's natural resources. MNR posted 44 proposals for public comment during 1997.

At many points in this report, I refer to and reinforce the recommendations I made in previous ECO Annual Reports. As in 1996, there is a growing interest by ministries in alternative approaches to environmental regulation, including alternative service delivery systems, voluntary compliance mechanisms, and standardized approvals. Ministries also continue to move environmental requirements from statutes into regulations and policies, as I noted in my 1996 Annual Report.

Ministry Business Plans

The business plans of all the ministries were posted on the Registry in 1997. This is an improvement over the previous year, when the plans were not posted. Unfortunately, commitments that ministries have made to the environment in their Statements of Environmental Value (SEVs) are not reflected in the majority of the 1997 business plans, which are even weaker than last year's in terms of integrating the environment into ministry business. Mention of the environment has also been deleted from the vision, mission statements, or strategic directions set forth by many ministries in their 1997 business plans. It appears that gains in the recognition of the environmental aspects of their core business made by ministries in the early and mid-1990s are being eroded. I encourage ministers to take the opportunity provided by the development of their 1998 business plans to incorporate environmental values and environmental health into the core business of their ministries.

Unposted Decisions

Each year, my staff and I review environmentally significant proposals and decisions that were not posted on the Environmental Registry, in order to confirm that the public participation rights under the *EBR* have been respected. I am pleased to see that in 1997 there were far fewer unposted decisions. As well, two new acts were posted for public comment very early in their development, while still at the stage of discussion papers, which ensured that comments submitted by the public could have more effect on decisions. I continue to encourage ministries, when determining whether proposals are environmentally significant, to err on the side of posting a proposal for public comment, thereby increasing transparency and accountability and improving government decision-making.

Posting Information Notices

I commend ministries for posting some policies and plans on the Registry as "information notices" even when not required under the *EBR*. However, certain other proposals were posted incorrectly under this provision, since

it does not require ministries to consider public comments. For example, MNR should have provided an opportunity for public comments on its decision not to enforce or administer an important provision of the federal *Fisheries Act* that safeguards fish habitat. Public feedback clearly indicated that people found this to be an environmentally significant decision with potentially far-reaching consequences for Ontario fish and waters.

Exceptions to Registry Posting

In certain specified situations, the *EBR* allows ministries not to post decisions and proposals on the Registry for public comment. In this Annual Report, we review several of these exceptions carefully, concluding that ministerial discretion could often have allowed the use of the *EBR* public participation processes in order to provide greater transparency and to alert members of the public to the nature of ministers' decisions.

Part 4 – ECO Reviews of Selected 1997 Ministry Policies and Decisions

During the past year, my staff and I carried out extensive reviews of several crucial ministry proposals that will have a significant impact on Ontario's environment. We reviewed whether the proposals were consistent with ministries' Statements of Environmental Values and with the *Environmental Bill of Rights*. We looked, in particular, at the degree of public involvement in ministry decision-making and whether public comments influenced ministry proposals and decisions.

The Quality of Ontario's Air — MOE

Over the past two years, the Minister of the Environment has announced almost a dozen initiatives aimed at improving air quality, and the ministry's 1997 business plan sets targets and deadlines to reduce pollutants that contribute most to smog. During the past year, my staff and I reviewed some of these initiatives, looking at their consistency with MOE's SEV and whether the public was involved in ministry decision-making.

Our reviews of these initiatives during 1997 have revealed several serious obstacles to achieving the smog reduction targets that MOE has set for Ontario. These obstacles include:

- The "Smog Plan" gives no detail on how approximately one-half of the needed smog reductions can be achieved.
- MOE is allocating only a small portion of the ministry's budget to clean air.
- MOE is relying on a voluntary approach to cutting air pollution.
- MOE has no plans to upgrade old certificates of approval to meet new and more rigorous air quality standards.

At the same time, the provincial government has no plans to improve public transit in Ontario, even though road vehicles are the number one source of smog-causing pollution. And although MOE's smog plan counts on Ontario Hydro's coal-burning power plants to reduce emissions significantly, Hydro is now planning to shut down seven nuclear reactors and shift to more burning of fossil fuels.

On the plus side, MOE posted several proposals and decisions on the Environmental Registry during 1997 that could produce positive results for air quality in the province. In December 1997, MOE posted a decision to begin a Drive Clean program, a vehicle inspection and maintenance program designed to reduce pollutants coming from cars, trucks and buses. And in June, the ministry posted a proposal for a Pilot Emission Reduction Trading project, an innovative, market-based approach to reducing emissions. MOE also made a formal submission to the U.S. Environmental Protection Agency, requesting that the U.S. adopt more rigorous standards for particulates and ground-level ozone.

The potential for these initiatives to improve air quality in the province will depend on how well the programs are implemented, whether transparency and accountability measures become part of their implementation, and how well the ministry carries out monitoring of air quality.

Managing Ontario's Natural Resources – MNR

In 1997 the Ministry of Natural Resources began a massive overhaul of land use planning. To understand the implications of the ministry's major new forest policies, my staff and I reviewed these policies in light of the forces shaping Ontario forests. These forces include:

- the terms and conditions imposed on MNR by the Environmental Assessment Board's 1994 Class Environmental Assessment for Timber Management.
- the increasing demand for wood.
- the intensification of resource conflicts between forestry, tourism, and natural heritage values.

MNR's ability to deal with these diverse pressures has been affected in the past two years by deep budget reductions, which have cut its staff and forest management budget in half.

In February 1997, MNR announced "Lands for Life," an ambitious review of land use planning and resource management on the Crown lands that make up Ontario's huge central forested area.

Regional Round Tables will be given the task of developing recommendations for allocating land on a long-term



basis to forestry, tourism and natural heritage protection. Within a relatively short period of time, the Round Tables have to absorb an enormous amount of information, understand complicated trends in wood supply and

demand, and consider many complex forestry policies and guidelines, the needs of the tourism industry, and the need to protect our natural heritage.

Our review of the Lands for Life process revealed significant concerns. These include:

- an extremely tight timetable for making long-term decisions.
- the public's concern that the consultation process has not been carried out fairly.
- concern about the quality of information available both to the public and to the Round Tables.

Environmental Monitoring

Environmental monitoring is the keystone to good environmental decision-making, as has been recognized in the Statements of Environmental Values by both MOE and MNR. In 1997, the ECO evaluated a number of MOE and MNR environmental monitoring programs relating to the management of air, water and natural resources. The programs were assessed to gauge the quality of both monitoring and reporting, and also to evaluate how effectively the programs are connected to any current stated ministry targets.

In our reviews, we found that in both ministries, significant environmental information is not being collected or, if collected, is not being analysed and reported. For example:

The Ministry of Natural Resources . . .

- has not analysed or reported forestry harvest data since 1991.
- has few population surveys for small game species or non-game wildlife, or population estimates for most wildlife species that are vulnerable, threatened or endangered.

The Ministry of the Environment . . .

- is not tracking total loadings of industrial discharges into waterways.
- does not monitor persistent toxics in effluents of sewage treatment plants.
- does not compile statistics on total loadings of raw sewage spills to waterways.
- has drastically reduced reporting on municipal/industrial discharges to water.

- has little data on the condition of the province's one million-plus septic systems.

In other cases, even when MOE has stated targets for environmental parameters, such as inhalable particulates and waste water discharges, the ministry often lacked monitoring data needed to assess progress toward the target. And a number of other programs monitoring other parameters, such as an incidence of spills, urban air quality, or quality of water in cottage lakes, were not connected to environmental targets. In still other cases, ministries have gathered monitoring information – databases on rare species, forest regeneration, contaminants in sport fish, or air quality in Ontario urban centres – but the information is not being used fully to bring about environmental improvement.

Many of these monitoring programs are undergoing major restructuring to cope with budget cutbacks, and must rely on strongly committed staff and volunteers.

Voluntary Agreements

In recent years, Ontario has joined a global trend toward relying on voluntary approaches to environmental protection rather than on government regulation. However, our review of these approaches during 1997 shows that voluntary agreements in Ontario are usually negotiated without any involvement of the public or environmental groups. In the future, it will be important to ensure that the negotiation process includes meaningful public involvement and backdrop regulations to increase public confidence in the use of voluntary agreements.

Alternative Service Delivery

Several provincial ministries introduced alternate methods of delivering services during 1997. ECO staff reviewed two of these programs – MNR's Aggregate Licensee Inspections and MOE's Remedial Action Plans (Support for Public Advisory Committees) – looking at the way changes to each delivery system were planned and then implemented by both ministries.

In our review, we looked at ministry planning before the implementation of the new delivery systems, at the quality of public consultation, and at the preparation and training of both ministry staff and the people who would

now be delivering the services. Finally, we asked whether the new alternative delivery systems would achieve the goals the ministry established when proposing the changes in service delivery. We found that a ministry's ability to achieve its goals is enhanced by good communications and careful advance planning.

Part 5 – Reviews and Investigations

Under the *EBR*, Ontario residents can ask ministers to review existing environmental policies, acts, regulations and instruments, or to review the need for a new policy, regulation or act. They can also ask ministers to investigate if they think someone is violating, or about to violate, an environmental law, regulation or the terms of approval of an instrument. Well-researched applications have led to positive results for the environment.

My staff provides assistance to people who request help in applying for reviews and investigations. Twenty-five applications were sent to the ECO this year, and we forwarded the completed applications to the ministries involved. Each year I report on how these applications were handled by the ministries.

Many applications dealt with matters that received wide public attention – for example, the discharges of contaminants by Ontario Hydro power plants and the regulation of recycling plants, including Hamilton's Plastimet site. Applications in 1997 covered topics that included potential damage to a provincially significant wetland, an MNR decision to withdraw from enforcement of federal *Fisheries Act* provisions, health concerns related to chlorination of drinking water, and the need for a watershed management plan to address drainage problems. As in previous years, the operation of landfill sites was the subject of applications.

This year's Annual Report includes in-depth reviews of several applications and the issues surrounding them, including applications regarding Ontario's Blue Box system, Ontario Hydro, the Plastimet fire in Hamilton, and watershed planning. Many of our findings highlight the difficulties people have in getting a problem resolved when several ministries as well as municipal organizations are involved, or when the province passes down to a municipal

level of government new responsibilities and service obligations. Often, there is no evidence the municipal level of government has the capacity to solve the problem. For example, local authorities facing watershed management issues often rely on leadership and advice from the province. These are the kinds of problems that need to be dealt with on an ecosystem basis and not on the basis of political boundaries, and their solution needs provincial leadership to be viable.

Ministry Handling of Applications

In assessing ministry responses to applicants, we reviewed whether the responses were thorough, and whether ministries provided a clear rationale for not undertaking the review or investigation. In a small number of cases, the ministry was not helpful in explaining why an application was denied or what other recourse might be available for addressing the applicants' concerns. I encourage ministries to provide detailed reasons to applicants for denying an application. As well, in order to be impartial, ministries are encouraged to assign the decision whether to undertake a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue. Once the ministry has decided to undertake a review, it should be completed within a reasonable period of time.

Part 6 – Instruments

Instruments are the legal documents of approval granted by ministries before companies or individuals can carry out activities that can have an impact on the environment. Under the *EBR*, ministries must "classify" the instruments they issue according to how environmentally significant they are. Classification determines which instruments will be posted on the Environmental Registry for public comment and determines as well the extent of the opportunities for appeal, review or investigation.

Although MNR staff worked hard to develop an instrument classification regulation in 1997, it is still in draft form. And some environmentally significant instruments are still left out of MNR's draft regulation – such as sus-

tainable forest licences and proposals to supply forest resources to an individual or a company. Unfortunately, MNR is using an *EBR* exception to remove many of the ministry's instruments from public scrutiny, and is proposing another regulation that defines certain instruments as "field orders," removing them as well from many of the *EBR*'s public participation processes.

Both the Ministry of Northern Development and Mines and the Ministry of Consumer and Commercial Relations have drafted their proposals for instrument classification, but neither ministry had finalized their regulations as of December 31, 1997.

Part 7 – Other Legal Rights

The *EBR* allows the public to apply for leave to appeal ministry decisions to issue instruments, such as the permits, licences or certificates of approval granted to companies. At the beginning of 1997, one application for leave to appeal was pending before the Environmental Assessment Board (EAB). Two additional applications for leave to appeal were posted on the Environmental Registry. While two of these applications were denied, another was successful.

This year's Annual Report contains descriptions of cases where Ontario residents sought leave to appeal ministry decisions to issue instruments, one relating to a waste processing site in Northumberland County and another concerning a waste disposal site in Middlesex County. I also report on the conclusion to the Petro-Canada case, which involved an appeal of the certificates of approval granted by MOE for an expansion of the company's lubricant production process at its Mississauga plant. Although the applicants were ultimately successful, the case illustrates the difficulties and financial obstacles faced by the public when they use legal processes to protect the environment for themselves, their families and their community.

The *EBR* also gives Ontarians the right to sue for damages if they experience direct economic or personal loss because of a public nuisance causing environmental harm. Two landmark cases were filed in 1997 under this provision of the *EBR*. Residents in Maple and Richmond Hill are suing Toronto on the basis that odours, noxious

gas, debris and noise emanating from the Keele Valley landfill have caused harm to local residents. In the other case, a Fort Erie resident began a class action proceeding against the municipality and the Regional Municipality of Niagara. The resident alleges that the water supplied to local residents is frequently contaminated by iron rust and microorganisms.

Part 8 – Summary of the Ministry Decision-Making Process

In this section of the ECO Annual Report, we review how all ministries have complied during 1997 with the technical requirements of the *EBR*, and in particular, how their actions have affected people's rights to use the *Environmental Bill of Rights*. I am pleased to see that overall there has been an improvement in this regard in 1997. However, there are still areas that could be improved, and I hope that this section of the report will assist ministries in complying with the *EBR* in the future.

Part 9 – Educational Initiatives

My staff and I travelled across Ontario in 1997, telling people about their rights under the *EBR*. From their response, and from the number of requests for information and presentations during 1997, it is clear that the people of Ontario want to know about the *Environmental Bill of Rights*. They continue to be interested in and concerned about the protection and restoration of our natural environment, and they want to know how they can become involved in ministry decision-making about the environment.

During the year, my staff and I spoke to service clubs, municipal councils, teachers and students at Ontario high schools, colleges and universities, and to community groups and conference participants. We met with business and municipal leaders, chambers of commerce, environmental groups, and MPPs and ministry staff members.

The ECO Public Information Officer responded to more than 1,500 inquiries for publications and we continued to distribute ECO publications – more than 36,000 in 1997.

ONE



The Environmental Bill of Rights and the Environmental Commissioner of Ontario

The *Environmental Bill of Rights (EBR)* gives the people of Ontario the right and the tools to become involved in ministry decisions that affect the environment. The *EBR* increases ministry accountability for these decisions, and it enables the public to ensure the decisions are made in accordance with a common goal of all Ontarians, that of protecting, conserving and restoring the natural environment of this province.

Preamble

- The people of Ontario recognize the inherent value of the natural environment.
- The people of Ontario have a right to a healthful environment.
- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.
- While government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.

Goals

The fundamental goals of the *Environmental Bill of Rights* are to protect, conserve and restore the integrity of the environment, to provide sustainability, and to protect the right of Ontario residents to a healthful environment.

These goals include preventing, reducing and eliminating the release of pollutants that unreasonably threaten the integrity of the environment. They include protecting and conserving biological, ecological and genetic diversity, and protecting and conserving Ontario's natural resources, including plant life, animal life and ecological systems. Further aims of the *EBR* are to encourage the wise management of our natural resources, and to identify, protect and conserve ecologically sensitive areas or processes.

Ministries covered by the *Environmental Bill of Rights*

- Agriculture, Food and Rural Affairs
- Citizenship, Culture and Recreation
- Consumer and Commercial Relations

- Economic Development, Trade and Tourism
- Environment
- Health
- Labour
- Management Board Secretariat
- Municipal Affairs and Housing
- Natural Resources
- Northern Development and Mines
- Transportation¹

The Environmental Commissioner of Ontario

The *Environmental Bill of Rights* calls for the appointment of an Environmental Commissioner of Ontario (ECO).

Mandate

- Review implementation of the *Environmental Bill of Rights*.
- Review ministries' compliance with the *Environmental Bill of Rights*.
- Give guidance to ministries in complying with the *Environmental Bill of Rights*.
- Assist ministries to provide educational programs about the *Environmental Bill of Rights*.
- Deliver public education programs about the *Environmental Bill of Rights*.
- Advise and assist people who want to participate in *Environmental Bill of Rights* processes.
- Review use of the Environmental Registry.
- Review ministerial decisions to exempt proposals from posting on the Environmental Registry.
- Review the use of appeals and court actions by the public.
- Review the way ministries process and decide Applications for Review and Investigation.
- Review the use of whistleblower protection rights.
- Report annually to the Legislative Assembly of Ontario, including: reporting on the work of the Environmental Commissioner and a summary of information about compliance with ministry Statements of Environmental Values.
- Present special reports to the Legislative Assembly of Ontario.

Public Rights to Participate

The *Environmental Bill of Rights* gives Ontarians the right to:

- Get notice of, and comment on, proposed policies, acts, regulations and instruments that may affect the environment.
- Access the Environmental Registry.
- Appeal certain ministry decisions.
- Ask a minister to change or eliminate existing environmental policies, acts, regulations and instruments, or ask for new policies, acts and regulations.
- Ask a minister to investigate contraventions of environmental acts, regulations and instruments.
- Sue someone for harming a public resource.
- Sue for personal damages if an environmentally harmful public nuisance causes direct economic or personal loss.
- Whistleblower protection.

The ECO Mandate and the Ministry Statement of Environmental Values

As one of the first steps in implementing the *Environmental Bill of Rights*, each ministry prepared a Statement of Environmental Values (SEV) that must be considered whenever an environmentally significant decision is made in the ministry. Each SEV contains an unequivocal commitment by the minister that the purposes of the *EBR* will be applied to these decisions. Consideration of the minister's Statement of Environmental Values thus forms a key part of my evaluation of the decisions made by the minister.

¹ On October 10, 1997, the Ontario government announced the reconfiguration of three ministries under the *EBR*. This reconfiguration resulted in the transfer of the Energy portfolio of the former Ministry of Environment and Energy and the Technology portfolio of the Ministry of Economic Development, Trade, Technology and Tourism to the newly created Ministry of Energy, Science and Technology. It also recreated two ministries, the Ministry of the Environment and the Ministry of Economic Development, Trade and Tourism. For the sake of clarity, this Annual Report uses the new ministry names even though some of the actions described below may have been taken by the former ministries (as they then were named). It is expected that the Ontario government will table amendments to the Executive Council Act in 1998 to reflect the reconfiguration of the ministries.

Each minister also made commitments in the SEV that are specific to the work of that particular ministry. For example, the SEV of the Minister of Natural Resources made a commitment to recognize, evaluate, and consider the non-market values of the natural environment. The SEV of the Minister of the Environment made a commitment to pollution prevention, and that of the Minister of Health, to include the environment in the ministry's framework for a "healthy public policy."

Protecting the rights of the people of Ontario to a healthful environment is at the core of the *Environmental Bill of Rights*. Members of the public use their rights under the *EBR* when they comment on ministry proposals or when they use an *EBR* application process to request actions by a minister to protect the environment. My staff and I undertake careful reviews of how ministries handle the comments and applications that come from the public. These reviews are an essential part of my mandate, and they are an important source of the information contained in my Annual Report to the Legislature.

In the ECO Annual Report, I review how the minister exercised discretion in relation to the rights of public participation that the *EBR* has granted to the people of Ontario. How did the minister respond to applications from the public requesting ministry action on environmental matters? Did ministry staff comply with the procedural and technical requirements of the law? And were the actions and decisions of the minister consistent with the ministry SEV and with the purposes of the *EBR*?

It is part of my mandate as Environmental Commissioner to encourage compliance with the goals, purposes and procedures of the *EBR*. My mandate also includes providing objective oversight in assessing the implementation of the *EBR*, and evaluating how ministers have considered their SEVs in making environmentally significant decisions. It does not include the power to force a minister to take a particular course of action. Rather, in reviewing decisions and reporting on them to the Legislative Assembly, I ensure that ministers are held accountable to the people of Ontario when they make decisions that affect the environment.

Can the Public Influence Decisions?

We have begun to see the benefits that can be achieved when people use their *EBR* rights to comment on the decisions ministers make about the environment. Throughout this Annual Report you will see examples of how people across Ontario used those rights in 1997 – such as the example on this page, where people in Sudbury were concerned that a proposal by the Ministry of Natural Resources would adversely affect the city's drinking water.

Four years after its proclamation, the *Environmental Bill of Rights* is fulfilling its promise. The hard work, time and effort of members of the public are being rewarded. In ways large and small, people using their *EBR* rights are contributing to a more healthful environment in Ontario.

Can the Public Influence Decisions?

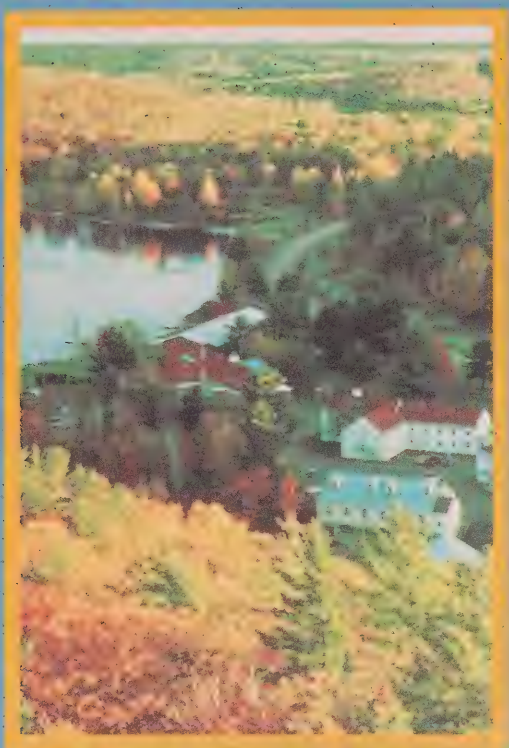
Wanapitei Provincial Park

(Northeast of Sudbury)
Registry # PB5E3001

description When MNR prohibited mineral exploration in all provincial parks in 1988, the ministry made a commitment to remove an area of high mineral potential from Wanapitei Provincial Park to allow mineral exploration. MNR posted a proposal to deregulate this portion of the park.

public comments The primary concern of the public was that mining would affect the water quality of Wanapitei Lake, a source of drinking water for Sudbury.

decision MNR modified its proposed boundary changes, keeping Wanapitei Lake within Wanapitei Provincial Park. The ministry also created a steering committee to set further conditions on mineral exploration in the deregulated area.



The Environmental Registry

What is it?

The Environmental Registry is the technological backbone of the *Environmental Bill of Rights*. A computer bulletin board, the Registry provides electronic access to environmentally significant proposals and decisions, appeals of instruments, court actions, and other information related to ministry decision-making. Ministries have to post this information on the Registry so that the public is able to provide input on decisions before they are made.

During this reporting period, Ontarians continued to make good use of the Registry, and new Registry user accounts continued to rise steadily. Information downloads averaged 4,215 a month in 1997.

Upgrade Update

Last year I recommended that the Ministry of the Environment (MOE) make technical and administrative improvements to the Registry. In the past, equipment problems have sometimes resulted in shortening comment periods for some proposals and delays in posting for others. Fortunately, MOE's Environmental Bill of Rights Office (EBRO) has begun the first stage of the two-stage Registry upgrade reported last year. I am now pleased to report that the Registry has been successfully mirrored on the EBRO's Internet Web site, allowing users to download the full text of proposals for some policies, acts, and regulations.

The second stage of this upgrade – a full migration of the Registry to an Internet Web site – has been delayed due to technical difficulties until early 1998. This transfer to Internet Web technology will allow users to customize their searches and have full access to a complete database of all Registry postings. The direct dial-up feature will be maintained for people who have a modem but no Internet access. A hypertext link to the full text of proposals will be available to those with Internet accounts. I will continue to monitor and report on these improvements, which should increase access for all Ontarians.

I commend MOE and the EBRO for investing the considerable time and resources needed to upgrade the Registry technically. With the full transfer of the Registry to the Internet, there will no longer be any technical barriers to posting proposals in an efficient and timely manner.

The Environmental Registry is also the home of the Environmental Assessment (EA) home page, where information about activities which fall under the *Environmental Assessment Act* can be found. In addition, the site is the home of Terms of Reference documents that are submitted to MOE to facilitate public consultation on proposed EA activities, including information on how to comment, time frames for comments, and decisions made. According to MOE, "when combined with the activities and information obtained by accessing the *EBR* home page and the Environmental Registry, Ontarians have only one place to look for environmental activities planned or under way in the Province of Ontario."

The Environmental Registry is available in both English and French. The Registry can be accessed at the ECO's Resource Centre in Toronto, at community information centres and First Nations libraries, and at most of Ontario's public libraries.

The Registry continues to be a cost-effective means by which ministries can solicit public input into environmental decision-making.

1997 Environmental Registry Use

Total Log-ons	8,195
Total New User Ids	1,641
Total Information Downloads	50,587

Recommendation 1

The Ministry of the Environment should ensure that the migration of the Environmental Registry to the Internet maintains access for people who use public libraries as an access point or who have a modem but no Internet access.



Ministry Environmental Decisions

Decisions and Proposals for New Acts, Regulations and Policies

When the *Environmental Bill of Rights (EBR)* came into force in February 1994, it replaced the earlier discretionary approach to public consultation. Today, in order to promote transparency in environmental decision-making, the *EBR* requires that environmental acts, regulations and policies be developed and amended with at least a minimum of public participation.

In previous ECO Annual Reports, I have noted the failure of some ministries to comply with *EBR* requirements for posting environmentally significant proposals on the Registry. In the past year, some of these ministries appear to have improved their compliance in this area.

In my 1996 Annual Report, I noted that the scope and pace of legal and regulatory changes to the environmental regulatory system had been staggering. In 1997, ministries continued, at a reduced pace, to reshape the legal and regulatory regime related to environment. For example, I estimate that amendments are pending or have been made to almost half the statutes and regulations prescribed under the *EBR*. Five different ministries developed and formally proposed environmentally significant new acts and regulations during the period covered by this Annual Report. The chart in Table 1 (pp. 21-25) illustrates some of the key measures that were proposed and decided in 1997.

Many important policies were posted on the Registry in 1997. Significant policies posted by the Ministry of the Environment (MOE) included those related to its efforts to address air pollution. These are reviewed in detail in the discussion of air quality in Part 4 of this report (pp. 31-36). Also during 1997, MOE withdrew a number of proposed *Environmental Assessment Act* guidelines that had been posted on the Registry in 1995, indicating that new guidelines would be posted. MOE did post two of these guidelines in 1997: one on terms of reference for environmental assessments, and one on the use of mediation in environmental assessments. The Ministry of Transportation (MTO) also posted a number of new policies, including one dealing with dust suppressants (reviewed on p. 19). In 1997, the Ministry of Natural Resources (MNR) posted 44 proposals for new acts, regulations and policies for public

comment. Many of these are discussed in detail in the section of this report devoted to natural resource issues (pp. 37-45).

To the credit of the ministries involved, proposals for two new acts, more than 20 regulations, and 15 policies were posted on the Environmental Registry for extended periods of public comment.

Many of the new initiatives outlined in the chart in Table 1 have not been finalized. This table also shows initiatives that were launched in 1996 and remain incomplete at the end of 1997.

In my 1996 Annual Report, I recommended that ministries stop using omnibus-style legislation to reform Ontario's environmental laws. I draw attention to one such proposal this year. Bill 152, the *Services Improvement Act* contained environmentally significant amendments, related to septic systems, proposed by the Ministry of Municipal Affairs and Housing (MMAH). The bill also contained an environmentally significant amendment to the *Health Protection and Promotion Act*, proposed by the Ministry of Health (MOH), removing the requirement that the Chief Medical Officer of Health for the province be informed about occupational and environmental health matters. While the former amendments were posted on the Registry for public comment as required, the latter amendment was not. However, I was pleased that MOH decided to withdraw its proposed amendment in November 1997.

In my 1996 Annual Report, I reported that the Ministry of Consumer and Commercial Relations (MCCR) had transferred its authority for training, licensing, inspection and prosecution functions under the *Gasoline Handling Act* to an industry-run, self-funded, not-for-profit, non-government organization called the Technical Standards and Safety Authority (TSSA). I expressed concern that the rights of the public under the *EBR* to participate in environmentally significant decision-making activities of the TSSA might be compromised. I am pleased to report that I have carefully monitored the work of the TSSA and can report that, thus far, the implementation of this alternate service delivery (ASD) system does not appear to have altered the rights of the public under the *EBR*. However, some coordination problems between these two

agencies are starting to appear.

I noted in my 1996 Annual Report that there was a declining interest by ministries in "command and control" regulatory approaches and a corresponding shift to ASD systems, voluntary compliance mechanisms, and systems for "standardized approvals." In 1997, ECO reviews of these developments found that the public is anxious about the lack of information and poor public consultation processes in the development of voluntary agreements and ASD systems.

In 1997, ministries continued to move requirements that were previously established in statutes into regulations and policies. For example, many of the public participation requirements for gravel pit operations previously set out in the *Aggregate Resources Act (ARA)* are now set out in standards that are referenced in the regulations under the *ARA*. Staff at MNR assure me that these standards have the full weight of law behind them. I will monitor their implementation.

The number of ministries that are prescribed for the *EBR* will be modified. The energy portfolio of the former Ministry of Environment and Energy has been transferred to the newly created Ministry of Energy, Science and Technology. Since there is a strong relationship between environmental issues and energy consumption, as demonstrated at the international Kyoto Conference on Climate Change in early December 1997, I was pleased that the Ministry of the Environment proposed to prescribe the new ministry for the *EBR*.

Ministry Business Plans

The Management Board Secretariat posted the 1997 business plans of all the ministries on the Registry with a 60-day public comment period. This is an improvement over the previous year, when the plans were not posted. However, this effort is diminished by the fact that the plans were posted after they had been finalized. Thus, while the public had notice of the plans, public comments could not be taken into consideration in their development.

In my 1996 Annual Report, I recommended that ministries make every effort to apply the environmental values contained in their Statements of Environmental Values (SEVs) and integrate them into their business plans. Our review of these plans revealed that commitments to the environment in the ministry SEVs are not reflected in the majority of the 1997 business plans. In fact, the plans of only three ministries (MOE, MNR, and the Ministry of Northern Development and Mines) mention their ministry's responsibility for the environment. The 1997 plans are even weaker than last year's in terms of integrating the environment into ministry business. For example, MMAH's 1996 plan indicated that the ministry would promote good planning and maintain tough environmental rules in land use planning, and included a performance measure to assess whether municipalities are adhering to provincial policy. In the 1997 plan, "environment" is not mentioned, and the measure of adherence to provincial policy is gone.

I note as well that mention of "environment" or "environmental sustainability" has been deleted from the vision or strategic directions of several EBR ministries. For example, in 1994 the mission statement of the Ontario

Ministry of Agriculture, Food and Rural Affairs was "to foster an economically viable, environmentally sustainable agriculture and food system where the participants cooperate to meet the needs of the people of Ontario and to compete in global markets." The mission statement in the 1997 plan is "to foster competitive, economically diverse and prosperous agriculture and food sectors and promote the economic development of rural communities." Reference to the environment has also been removed from the ministry vision or strategic directions of the Ministry of Transportation and the Ministry of Economic Development, Trade and Tourism.

From our review of ministry business plans, it appears that the recognition of the environmental aspects of their core business by ministries in the early and mid-1990s is being eroded. This is contrary to the intent of the EBR. Ministers have another opportunity when they develop their 1998 business plans. I encourage them to use that opportunity to reflect how environmental health has been incorporated into the core business of the ministry. I remind them that a healthy economy and healthy society depend on a healthful environment.

Environmental Approvals Improvement Act, 1997

Standardized Approvals

The *Environmental Approvals Improvement Act* (EAIA) enables Cabinet to create a "standardized approvals" regime to replace, in certain cases, the need for certificates of approvals under the *Environmental Protection Act* and the *Ontario Water Resources Act*. The Ministry of the Environment (MOE) claims this new approach will cut red tape and lessen the ministry's workload. As well, MOE claims this system will apply to activities that have predictable, controllable and well-understood effects, such as restaurant exhausts.

One concern about standardized approvals is that polluters may be able to avoid liability in the civil courts if they are sued under the common law causes of action such as negligence, nuisance or trespass, or the public nuisance provisions in the EBR. This is because the polluters will be able to claim they were acting under legislative authority and thus have a permit to discharge pollution. MOE maintains that "the standards in the proposed regulations will have more stringent emission levels and design standards than might otherwise be required if an applicant were to apply for a certificate of approval." We must await the new regulations to determine the impact of this method of regulating polluting activities. The ECO will monitor these developments.

Dissolving the Environmental Compensation Corporation

The EAIA also dissolves the Environmental Compensation Corporation (ECC) and with it, the right of spill victims to apply for compensation. The ECC was set up to help victims of pollution spills in recognition of the difficulties people have in seeking redress through the court system. Victims of spills will now be required to initiate their own claims and legal actions against responsible parties to obtain compensation for spills. This will be time-consuming and costly for individuals and families. In those circumstances where the responsible parties are bankrupt, it is probable that spill victims will not be compensated.

Background

In 1997, the Ministry of Transportation (MTO) posted a proposal on the Environmental Registry noting that "MTO does not have the resources to commit to . . . testing," prior to approval, of the materials used to minimize dust during road construction and on unpaved rural roads. Instead of continuing to do its own testing, MTO will expand its list of permitted dust suppressants by relying on a list issued by the Ministry of the Environment (MOE).

However, MOE's list comes with a disclaimer: "The MOE does not endorse any of the following products nor does it guarantee that the products are environmentally benign."

The Environmental Commissioner of Ontario has received numerous expressions of concern from members of the public in relation to the use and control of dust suppressants. In particular, people were concerned about the effects of the material when it runs into lakes and rivers. In response to MTO's proposal, one commenter said that only those dust suppressants found to be without environmental and health impacts should be permitted for use. During the past year, the ECO reviewed whether any ministry is assuming the responsibility for testing dust suppressants.

ECO Findings

Salt brine and calcium chloride are commonly used in Ontario as dust suppressants, but so are a number of "recycled" industrial by-products, including pulping liquors from pulp and paper mills and effluents from oil refining and chemical manufacturing.

MOE classifies dust suppressants either as "waste" or "products." Waste dust suppressants are surplus by-products of a manufacturing

process and are subject to waste regulations and associated record-keeping requirements. Applicators must possess a certificate of approval for a Dust Suppressant Waste Management System. Companies prefer to have their dust suppressants classified as "products," and MOE staff indicate that no certificates of approval for applying dust suppressants have been issued since 1989.



Product dust suppressants are materials that MOE is satisfied are produced or refined for that purpose, and are not subject to waste regulations. Instead, companies must submit information to MOE on the product's toxicity test results, its chemical composition, how it is produced, and a description of any quality assurance/quality control programs. If MOE accepts the material as a product, a Letter of Agreement specifying the product's composition is struck between the ministry and the producer.

Although MOE's current approach provides some measure of control over dust suppressants, MOE relies on the information provided by the company, and does not conduct independent tests on dust suppressants. Nor are there regulated limits for the levels of contaminants permitted in dust suppressants. MOE has told the ECO that the ministry plans to release a dust suppressant regulation as part of the regulatory reform initiative, and the draft regulation will be placed on the Environmental Registry. According to MOE, the proposed regulation will address maximum contaminant levels allowed in dust suppressants, as well as proper application requirements. There will be reporting and record-keeping requirements, and the regulation will not distinguish between waste and product dust suppressants.

The ECO will continue to monitor this issue.

Can the Public Influence Decisions?

Small Septic Systems

Registry # A17E0001

description The authority for regulating small on-lot septic systems was transferred in 1997 from the Ministry of the Environment (MOE) to the Ministry of Municipal Affairs and Housing (MMAH) and Ontario municipalities.

public comments During province-wide consultation, people told MMAH they wanted more clarity in the legislation about who could install and inspect septic systems, exactly what authority municipal officials would have, and what types of sewage systems would be involved. Responding to the Registry posting, representatives from an environmental public interest group said they were concerned the legislation would have negative effects on groundwater in Ontario.

decision Changes to the legislation clarified the authority of officials to enforce the qualification requirements for sewage system installers and inspectors and made clear exactly which types of sewage systems would remain under MOE's regulatory jurisdiction. MMAH is now carrying out more research into sewage system failures, making sure that ministry staff are involved in the development of a provincial groundwater strategy, and looking for people with experience in on-site sewage systems to serve on the Building Code Commission.

Ministry of the Environment: Regulatory Reform

Strengthening Environmental Regulations

In late November 1997, the Ministry of the Environment (MOE) released the second stage of its regulatory reform initiative, "Better, Stronger, Clearer: Environmental Regulations for Ontario" (BSC). BSC is part of MOE's overall regulatory review, an overhaul of regulations that started in July 1996 with the release of the discussion paper, "Responsive Environmental Protection" (REP). In my 1996 Annual Report, I reviewed REP and expressed concern that MOE appeared unwilling to consider the need to preserve and strengthen certain environmental regulations. Based on that review, I recommended that MOE make strengthening environmental protection a goal of future regulatory amendments. The ministry included this goal in its 1997 reform package.

Postings on the Environmental Registry

In my 1996 Annual Report, I recommended that ministers ensure that the public not be asked to comment on too many proposals at the same time. I urged them to extend comment periods to compensate for overlapping comment periods.

Sixteen of MOE's regulatory reform proposals were posted on the Environmental Registry in December. It will be challenging for people to become informed of the proposed changes and to provide meaningful submissions to the ministry since the comment periods on these proposals overlap. However, the schedule provided by MOE telling when these proposals will be posted on the Registry will help people to prepare for a review of the BSC proposals.

Can the Public Influence Decisions?

Treatment of Combined Sewer Systems

Registry # PA6E0004

description Storms can temporarily overwhelm the capacity of municipal sewer systems that carry both sanitary wastewater and stormwater in a single pipe, in some cases discharging untreated sewage into lakes and rivers. In February 1997, MOE posted a proposal on the Environmental Registry that would require municipalities with combined sewer systems to develop a pollution prevention plan, meet minimum overflow controls, and provide additional controls when beaches would be affected.

public comments The public asked MOE to clarify its requirements and make several technical changes.

decision Comments from the public resulted in a decision that gave clearer direction to municipalities. MOE clarified that although extensive new development will not be permitted in areas where combined sewer systems have serious deficiencies, small infill development will be permitted. Another change: when chlorination is used as the disinfection process, the effluent must be dechlorinated.

Table 1: Selected Posted Acts and Regulations

ONTARIO MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS (OMAFRA)

Bill 146, *Farming and Food Production Protection Act, 1997* (AC7E0001.P)

Proposal posted 28-Jan-97

Decision not posted

- Provides broader protection to farmers against complaints from neighbours than the *Farm Practices Protection Act (FPPA)* (1988), which it replaces.
- Expands list of nuisances that farmers are permitted to cause as a result of normal farm practices from noise, odour, and dust, to include: flies, smoke, vibration, light.
- No municipal by-law can restrict a normal farm practice.

Environmental Implications and Public Participation

- If a farm practice is determined to be a "normal" practice by the Normal Farm Practices Protection Board, neighbours cannot succeed in stopping the practice through a court order.
- Under the new *FPPA*, as under the old *FFPPA*, environmental protection legislation is still paramount; "normal" farm practices are not protected practices if they contravene environmental regulations, permits, or statutory provisions.
- The Normal Farm Practices Protection Board will have to be applied to before a complainant can sue in court for harm to a public resource or public nuisance (under the *EBR*) or for nuisance under common law.

ECO Commentary

- A discussion paper posted on the Registry in January 1997 proposed changes to the act; public consultation on the proposal led to Bill 146.
- The ECO commends the early posting of the discussion paper, thus maximizing the opportunity for public participation. However, to satisfy the *EBR* requirement to notify the public of proposals for environmentally significant acts, the proposal should have been posted a second time for public comment once the full text of the bill was drafted.
- The ECO will review this law when it is finalized.

CONSUMER AND COMMERCIAL RELATIONS (MCCR)

O.Reg 156/97 (Certification of Petroleum Equipment Mechanics), made under the *Gasoline Handling Act* (RL7E0003.P)

Proposal posted 7-Apr-97

Decision not yet posted

- The regulation creates a certification system for petroleum equipment mechanics; operators of licensed service stations and marinas will be required to have equipment installed, serviced, and maintained by certified persons.

Environmental Implications and Public Participation

- Certification will ensure minimum standards of knowledge among operators and maintainers of petroleum equipment in retail facilities which could reduce leaks and accidents. Such events can cause serious environmental harm and create a risk to the public.

ECO Commentary

- The regulation came in force in July 1997, but no decision notice was posted in 1997.
- The regulation was filed May 2, 1997, five days before the 30-day comment period had ended.
- MCCR or the TSSA should ensure that decision notices are posted in a timely manner and that they do not act contrary to the *EBR* by finalizing decisions before the end of the publicized comment period.

Table 1: Selected Posted Acts and Regulations

Standard adopted under the *Gasoline Handling Act: Diking and Secondary Containment for Aboveground Tanks* (RL6E0003.D)

Proposal posted 28-Nov-96

Decision posted 9-May-97

- Double-walled aboveground gasoline storage tanks will no longer be required to be surrounded by an earth dike (single-wall tanks will still require dikes).

Environmental Implications and Public Participation

- The TSSA reports that the use of double-walled tanks to contain potential spills may decrease the risk of leaks; secondary containment through double-walled tanks instead of dikes has been approved by the Underwriters' Laboratories of Canada (ULC), an organization that performs tests on equipment and certifies it for safety and standardized manufacturing.

ECO Commentary

- Documentation on SEV consideration provided by the TSSA showed that the TSSA applied MCCR's SEV carefully in making this decision.

ENVIRONMENT (MOE)

Bill 57, *Environmental Approvals Improvement Act, 1997* (AA6E0001.D)

Proposal posted 3-Jun-96

Decision posted 7-Aug-97

- Amends the *Environmental Protection Act (EPA)* and the *Ontario Water Resources Act (OWRA)*.
- Eliminates the Environmental Compensation Corporation and repeals the *Ontario Waste Management Corporation Act*.
- Allows exemptions from individual approval requirements of the *EPA* and *OWRA*.
- Companies may be deemed to have a certificate of approval (C of A) or may be exempt from applying for a C of A if they meet the requirements of Standardized Approvals Regulations (SARs); these regulations have not yet been released.
- Grants Cabinet a broad power to exempt companies, processes, activities, or entire industries from any provisions of the *EPA* or the *OWRA*.
- Expands the fee-charging authority under the *EPA* and the *OWRA*.
- MOE has told the ECO that "...many of the proposed regulations require a professional engineer to ensure that certain standards have been met, or require the consent of a municipality to the undertaking, or both. Under the proposed standardized approval regulations, regulated parties will be required to submit a notice to the ministry containing detailed information which will be subject to ministry review. In addition, the information contained in the notices is proposed to be included in an integrated ministry database system; which will be accessible by all ministry abatement and enforcement officers for inspection purposes."

Environmental Implications and Public Participation

- Allows Cabinet to make environmentally significant decisions without public notification or consultation.

- Commenters noted that holders of standardized approvals may be able to invoke the defence of statutory authorization in response to law suits – however, unlike certificates of approval, with standardized approvals there is little or no scrutiny either by the ministry or by the public in the granting of the approval.
- Could reduce the number of classified instruments issued under the *EPA* and *OWRA*, thus reducing opportunities for public participation under the *EBR*.
- Standardized approvals may make consideration of cumulative impacts on the environment difficult.
- In a summary of its decision-making record for Bill 57, MOE indicated that since all the changes are "financial or administrative in nature and would not result in any impacts on the environment," there was no need to consider its SEV. The ministry went on to add that the SEV will be considered when (SARs) are being developed to exempt the requirement for C of As for certain activities under the *EPA* and *OWRA*.
- Impacts will depend on the provisions of new regulations which will be made under the *EPA*.

ECO Commentary

- MOE's decision notice did not provide a description of the comments that had been made to the ministry; the notice should have described the substantial changes suggested and stated why those changes were not incorporated into the decision.
- ECO rejects MOE's assertion that because this bill is environmentally insignificant (financial or administrative in nature), there was no need to consider the ministry's SEV. This is an environmentally significant act which should have undergone SEV consideration.
- No SARs were posted on the Registry in 1997 but a posting outlining "proposal concepts" for 14 regulations was posted in early February 1998.
- The ECO will review the regulations when they are posted.

Bill 107, *Water and Sewage Services Improvement Act, 1997* (AA7E0001.D)

Proposal posted 20-Jan-97

Decision posted 29-Jul-97

- Authorizes the transfer of water and sewage works owned by the Ontario Clean Water Agency (OCWA) to municipalities.
- Municipal councils, and in unorganized areas, the Ministry of Municipal Affairs and Housing, are given enforcement responsibility for the sewage system provisions of the *Environmental Protection Act*.

Environmental Implications and Public Participation

- Septics provisions have not been proclaimed and are superseded by provisions in Bill 152, the *Services Improvement Act*, that transfer responsibility for septic systems from MOE to municipalities.
- It is unclear what environmental impact the transfer of water and sewage works to municipalities will bring about.
- Impacts cannot be accurately predicted, because they will depend on the choices of individual municipalities after transfers of works.

ECO Commentary

- MOE decision notice was informative and provided a good summary of the comments that had been made to the ministry and the ministry's responses.

Table 1: Selected Posted Acts and Regulations

Amendments to Regulation 347 (Waste Management), made under the *Environmental Protection Act* (RA7E0012.P)

Proposal posted on 22-Oct-97

Decision not yet posted

- Amends the list of designated wastes under the *EPA*.
- Several wastes are exempted from certificate of approval requirements, including: photographic waste that contains silver (when it is being transferred to a site where silver is recovered); chop line residues transferred by a generator and destined for a site at which it is to be processed for recovery of metal and plastic (chop line residue is residue remaining after metal is recovered from wire and cable, and it contains polyvinyl chloride, lead and cadmium); and, spent pickle liquor (where it will be used as a treatment chemical in a sewage or wastewater treatment plant).

Environmental Implications and Public Participation

- The proposed regulation reduces regulatory control of these substances which all contain hazardous wastes.
- This was a complex proposal which only a few people felt qualified to comment on; one organization requested an extension of the comment period until Dec. 31, 1997, which was not granted.

ECO Commentary

- In December 1997, MOE indicated that the proposed amendments were still under discussion and that a decision notice was expected by the end of 1997. However, a decision notice has not yet been posted.

Proposed amendments to Regulation 351, Marinas Regulation, made under the *Environmental Protection Act*

Proposed 30-Dec-97 (RA7E0027.P)

Decision not yet posted

- In "Responsive Environmental Protection," MOE proposed to revoke this regulation and replace it with a voluntary code.
- The regulation requires marinas to provide and maintain waste management facilities for boaters: litter containers and facilities for pumping out waste tanks.
- Under the December 1997 proposal, MOE would retain the current regulation, and supplement it with the voluntary code of practice already produced by the Ontario Marina Operators Association.

Environmental Implications and Public Participation

- Compliance with the code by private marina operators should increase environmental protection.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.
- MOE changed its position after public and stakeholder comments were made on the REP proposal. The key public concern was that not all marinas would follow the voluntary code.

Proposed amendments to O.Reg. 77/92 (Exemption for Ground Source Heat Pumps), made under the *Environmental Protection Act*

Proposed 24-Dec-97 (RA7E0017.P)

Decision not yet posted

- The amendment would ban the use of methanol as a heat transfer agent in new ground source heat pumps.
- Prohibits the alteration, extension or replacement of existing ground source heat pumps that use methanol.

Environmental Implications and Public Participation

- Methanol is a highly toxic agent that can contaminate ground water and can cause death through either severe doses or prolonged exposure.
- The proposed amendment would require the use of safer alternatives to methanol as a transfer agent for ground source heat pumps.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.
- These amendments were first presented in "Responsive Environmental Protection" (RA6E0009.P) and are now proposed, without changes, as part of the "Better, Stronger, Clearer" initiative.

Consolidation of O.Regs. 660/85, 661/85, 663/85 and Regulation 355 ("Acid Rain Regulations"), made under the *Environmental Protection Act*

Proposal posted 30-Dec-97 (RA7E0030.P)

Decision not yet posted

- The proposed regulation would replace four previous regulations, which limit sulphur dioxide (and, in one case, nitric oxide) emissions released by four companies: Inco, Falconbridge, Algoma Steel, and Ontario Hydro.
- Under the new regulation emissions limits would remain the same; reporting would be reduced from twice or four times per year to once per year.

Environmental Implications and Public Participation

- The changes streamline existing regulations and make some administrative changes, while maintaining the same regulatory standards.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.

Table 1: Selected Posted Acts and Regulations

Proposed amendments to O.Reg. 215/95 (Electric Power Generation Sector), made under the EPA (MISA reg.)

(RA7E0018.P)

Proposed amendments to O.Reg. 214/95 (Iron and Steel Sector Regulation), made under the EPA (MISA reg.)

(RA7E0019.P)

Proposed amendments to O.Reg. 562/94 (Metal Casting Sector Regulation), made under the EPA (MISA reg.)

(RA7E0022.P)

Proposed amendments to O.Reg. 537/93 (Petroleum Refineries Sector Regulation), made under the EPA (MISA reg.) (RA7E0026.P)

All Proposed 30-Dec-97

Decisions not yet posted

- Reduces chronic toxicity testing frequency from semi-annual to annual following three years of semi-annual chronic toxicity testing and adequate data collection to understand the harmful effects of the effluent.
- Reduces monitoring requirements from daily to three days a week where effluent parameters are equal to or less than 75% of the limit for 12 consecutive months; more frequent monitoring must be reinstated if limits are exceeded.
- Removes requirement to monitor parameters not used or present on site for 24 consecutive months; discharger must continue to monitor these parameters annually and reinstate more frequent monitoring if limits are exceeded.

Environmental Implications and Public Participation

- Because chronic toxicity testing is important in determining whether effluent may cause harm over a long period of time, there is some concern that reduced chronic toxicity testing may compromise understanding of harmful effects of effluent.

ECO Commentary

- Decision notices were not posted on these proposals in 1997.
- The ECO will review this decision when it is posted.
- These amendments were first presented in "Responsive Environmental Protection" (RA6E0009.P) and are now proposed, without changes, as part of the "Better, Stronger, Clearer" initiative.

Proposed amendments to O.Reg. 760/93 (Pulp and Paper Sector Regulation), made under the Environmental Protection Act (MISA reg.)

Proposed 31-Dec-97. (RA7E0025.P)

Decision not yet posted

- Removes requirement that dischargers of AOX (total adsorbable organic halides) submit reports over time on how to eliminate AOX by year 2002, but introduces requirement that MOE review the science on AOX by 2000 in relation to its goal of eliminating generation of AOX.
- Advances date that dischargers must meet standard of 0.8 kg AOX/tonne of pulp from December 31, 1999 to the date this regulatory amendment is filed.

- Reduces chronic toxicity testing frequency from semi-annual to annual, following three years of semi-annual chronic toxicity testing and adequate data collection to understand the harmful effects of the effluent.
- Reduces monitoring requirements from daily to three days a week where effluent parameters are equal to or less than 75% of the limit for 12 consecutive months; more frequent monitoring must be reinstated if limits are exceeded.
- Removes requirement to monitor parameters not used or present on site for 24 consecutive months; discharger must continue to monitor these parameters annually and reinstate more frequent monitoring if limits are exceeded.

Environmental Implications and Public Participation

- While MOE remains committed to elimination of AOX, the removal of the requirement that dischargers submit elimination plans may have a negative impact on the environment because the requirement was meant to encourage innovative technologies to deal with AOX generation; the science on AOX may not produce new technologies if the deadline for elimination of AOX by 2002 no longer exists.
- Because chronic toxicity testing is important in determining whether effluent may cause harm over a long period of time, there is some concern that reduced chronic toxicity testing may compromise understanding of harmful effects of effluent.
- In "Responsive Environmental Protection," MOE proposed removing both the requirement to submit elimination plans and MOE's review of the reports against the goal of zero AOX; MOE appears to have compromised by retaining the goal of eliminating AOX.
- The date that dischargers must meet the standard of 0.8 kg AOX/tonne of pulp has been advanced because dischargers are already meeting this standard due to new technology.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.

MUNICIPAL AFFAIRS AND HOUSING (MMAH)

Bill 152, Services Improvement Act (A17E0001.D)

Proposal posted 22-Aug-97

Royal Assent on 8-Dec-97

Decision posted 16-Dec-97

- Schedule B transfers authority for regulating small, on-lot septic systems from Part VIII of the *Environmental Protection Act* (administered by MOE) to the *Building Code Act, 1992* (administered by MMAH and enforced by municipalities). The small number of large and off-lot systems will still be regulated by MOE.
- The Building Code will establish standards that sewage systems must meet.
- The bill introduces mandatory certification of inspectors and installers under the Building Code.

Environmental Implications and Public Participation

- Following the transfer of responsibility for septic systems, it is unclear how MOE, MMAH and municipalities will work together to link septic issues to a strategy for the management and protection of groundwater.

Table 1: Selected Posted Acts and Regulations

ECO Commentary

- Regulatory responsibility for septic systems was transferred from MOE to municipalities as part of the government's "Who Does What" initiative, to facilitate "one window" building permits. This appears to place greater emphasis on the customer service side of septic system management rather than the environmental protection side.
- It is questionable whether all municipalities have adequate investigation and enforcement capabilities to deal with the cumulative and growing environmental and public health threats due to improperly functioning septic systems.
- Decision appears to be consistent with MMAH's SEV.

NATURAL RESOURCES (MNR)

Bill 119, *Red Tape Reduction Act (Ministry of Natural Resources) 1997* (AB7E4001.P)

Proposal posted 6-Feb-97

Decision not posted

- Amends several acts prescribed under the EBR.
- Restrictions on the maximum size of parcels of public lands sold by MNR, and on their minimum price, would be removed from the *Public Lands Act* and such sales would be approved by the minister, rather than by Cabinet.
- Under the proposed legislation, many public land and water management decisions could be delegated to private organizations.
- Amendments to the *Conservation Authorities Act* would give conservation authorities the power to dispose of rights to gas and oil resources on their lands; extraction must be made from adjacent lands not owned by authorities.
- The provincial Cabinet would be given authority to make regulations "governing applications for approvals" under the *Lakes and Rivers Improvement Act*.

Environmental Implications and Public Participation

- Some commenters worry that Conservation Authorities would make deals for oil or gas extraction that harm sensitive lands in their ownership.
- Authorizing the delegation of environmental policy decisions to private organizations is of concern to some environmental groups, who argue that it is the role of governments to make such decisions.
- Public oversight of such delegation is not addressed in the proposals and accountability for these decisions may suffer.

ECO Commentary

- The bill received First Reading only during 1997; the bill was not passed before the session of the Legislature ended on Dec. 18, 1997, and thus died on the order table. The ECO will review if the bill is re-introduced.

Bill 139, *Fish and Wildlife Conservation Act, 1997*

Related proposal—AB6E5010.P—posted 30-Sep-96 and AB7E6001.P (information notice) posted 19-Sep-97

Royal Assent on 18-Dec-97

Decision not yet posted

- The act is similar to the *Game and Fish Act (GFA)*, which it replaces.
- The new act is better organized, and easier to read than the *GFA*.
- Terminology is somewhat different from the *GFA*; categories of "specially protected" species introduced.
- Compared to the *GFA*, the new act protects more species; certain penalties are increased, particularly those relating to the illegal trade in animal parts; provides MNR with improved enforcement capabilities.
- Prohibits the establishment of new dog training facilities using wild animals, but existing facilities are grandparented.

Environmental Implications and Public Participation

- MNR has conducted substantial public consultation on fish and wildlife policy over several years, outside the EBR regime.
- Proposed changes to the *GFA* were posted as a discussion paper in September 1996; public consultation led to Bill 139.
- New act offers somewhat expanded protection of species and better enforcement capability.
- Measures to combat the illegal trade in game parts (particularly black bear parts) were greatly needed; as pressure on the species from unauthorized hunting has increased dramatically.
- Game farming not regulated under new act will be regulated by OMAFRA following an environmental assessment.

ECO Commentary

- The ECO commends the early posting of the discussion paper, thus maximizing the opportunity for public participation. However, to satisfy the EBR requirement to notify the public of proposals for environmentally significant acts, the proposal should have been posted a second time for public comment once full text of bill was drafted.
- Bill 139 was posted a second time as an information item.
- Bill 139 strikes a careful balance among the competing interests of various groups.
- The ECO will review new *GFA* regulations after they are made available.



Why Review Unposted Decisions?

Public participation in environmental decision-making is at the heart of the *Environmental Bill of Rights*. When it comes to our attention that environmentally significant ministry proposals and decisions have not been posted on the Environmental Registry, we review them to determine whether the public's participation rights under the *EBR* have been respected. Table 2 illustrates the nature of these decisions, the rationale provided by each ministry for not posting them on the Registry, and a brief ECO commentary.

General Observations

Overall, there were far fewer unposted environmentally significant decisions in 1997 than in previous years, and I congratulate the ministries for this improvement in complying with the public participation provisions of the *EBR*. In particular, the Ministry of Natural Resources made a noticeable effort to improve its compliance with the *EBR* by posting numerous proposals for acts, policies and regulations.

Several new acts were posted for public comment very early in their development, while they were still at the stage of discussion papers. This practice of posting proposals during the decision-making process is a good one. It helps to ensure that comments are considered at a time when they can influence decisions. However, to provide greater transparency, the revised act that results from this process should be posted a second time for public comment, especially if the proposal is complex or there is considerable public interest.

There is a wide range of interpretations among ministries regarding the meaning of "environmental significance" and how to determine if proposals are subject to the *EBR* requirement to post them on the Environmental

Registry. Ministries are encouraged, when in doubt, to err on the side of posting a proposal for public comment. The Registry creates opportunities for public participation that serve to enhance ministry decision-making. I would also remind all ministries that a decision that is likely to produce positive environmental effects is also an environmentally significant decision that is required to be posted on the Registry.

Ministries' Use of the Registry for Posting Information Notices

During 1997, the Ministries of the Environment (MOE), Natural Resources (MNR), Transportation (MTO), and Consumer and Commercial Relations (MCCR) posted information notices to inform the public about decisions. For example, MOE posted the government's White Paper on Electricity Restructuring on the Registry on behalf of the Ministry of Energy, Science and Technology, which is not yet a prescribed ministry under the *EBR*. MNR voluntarily posted notice of forest management plans, even though it's not required that these plans be posted, because they have been approved under the Timber Class Environmental Assessment. This is a good use of the Registry as a tool to inform the public about ministry activities.

There is, however, a drawback if ministries use this provision incorrectly, since the notice provision of the *EBR* does not compel the ministry to consider public comment and to explain how it made use of comments in its decision. For example, MNR should have provided an opportunity for public comment on its decision not to enforce or administer s.35 of the federal *Fisheries Act*. Instead, asserting this was only an administrative matter, MNR posted an information notice that the decision had been made and when it would take effect. Comments back to the ministry from members of the public clearly indicated

MNR Withdraws from Federal Fisheries Act

Background

The Ministry of Natural Resources (MNR) announced that on September 18, 1997, it was withdrawing from the administration and enforcement of the s.35 provisions of the federal *Fisheries Act*, which require authorization for anything that harms, alters, disrupts or destroys fish habitat. Under a 1989 agreement with the federal government, the ministry had taken over enforcement and authorization of projects under these provisions from the federal Department of Fisheries and Oceans (DFO).

The ministry posted its decision on the Environmental Registry as "information only" and thus not open to public comment. MNR said these were administrative and procedural changes that "will not significantly affect the environment" — as long as "the DFO moves to fulfill its constitutional responsibilities for fish habitat protection." However, the ministry inadvertently included a comment period when posting the decision, and several comments came in from the public, all of them critical of MNR's decision.

Public Comment

Several people argued that MNR's claims that fish habitat would not be harmed were misleading, since at the time that MNR announced its decision the DFO had only seven fisheries biologists in Ontario, all working in Burlington and none of whom have the authority to lay charges. Other commenters felt the ministry's action was designed to lever resources from the federal government. Trying to recreate the existing network of experienced biologists that MNR had in place across the province would be inefficient and costly to taxpayers, according to another commenter. Other people were concerned that MNR's action would result in red tape and delays for development projects, which would now have to be authorized by the limited DFO staff available.

ECO Commentary

This decision is inconsistent with several of the objectives in the ministry's Statement of Environmental Values (SEV), one of which is to "ensure the long-term health of ecosystems by protecting and conserving our . . . aquatic resources." Not consulting with the public in making this decision is also inconsistent with the ministry's SEV principle of "openness and consultation in decision-making that may significantly affect the environment." The lack of consultation is also at odds with MNR's 1997 business plan, in which "...decisions about natural resources protection and use are made in an orderly and open way," leading to a "high level of public satisfaction with involvement in decisions related to fish and wildlife." It is difficult to see how this decision will help MNR achieve one of its main corporate priorities for 1997: to increase angling and hunting opportunities in the province.

MNR Response

MNR has told the ECO that the ministry "is committed to assisting DFO during the transition period. Further, MNR is not issuing work permits under provincial legislation for work in or around water until DFO has provided advice or authorization on fish habitat protection. MNR staff provide DFO with any local habitat information that is on file. MNR informs clients of their responsibility under the act, and reports any potential fish habitat violations to the DFO. MNR is satisfied that DFO has recognized and resumed its responsibility in this regard and is working with DFO to ease the procedural transition."

that people found this to be an environmentally significant decision with potentially far-reaching consequences for Ontario fish and waters. (See the discussion above.)

Ministries should ensure that decisions are not post-

ed merely for "information purposes" if they are legally required to be posted with an opportunity for public comment.

When Posting on the Registry is not Required – Exceptions

The *EBR* allows ministries in certain specified situations not to post decisions and proposals on the Registry for public comment. These are called “exceptions.” ECO staff review how the ministries use these exceptions to make sure that people are not being unreasonably deprived of their public participation rights.

The incorrect use of exceptions continues to be a problem. In December 1997, we issued a draft discussion paper on exceptions. When the paper is finalized, we will issue a guidance document to assist ministries in complying with the posting requirements of the *EBR*.



One of the problematic issues in this area is how the ministries are using the exception provision for decisions they identify as “predominantly financial or administrative.” It is my view that the financial or administrative exception should be used only if the proposal has minimal environmental significance. If a proposal is environmentally significant, the minister should use discretion and post for public comment. To see how the ministers used these and other exceptions, please see chart in Table 2 on unposted decisions.

The *EBR* requires that the minister consider the ministry Statement of Environmental Values (SEV) for all environmentally significant decisions the ministry makes. However, many ministries are not considering their SEVs if, in their opinion, the decision is not subject to the public notice and comment provisions of the *EBR*. This is an incorrect interpretation of the *EBR*.

Recommendation 2

Ministers should ensure that the ministry Statement of Environmental Values is considered whenever they make environmentally significant decisions, whether or not such decisions are subject to the Registry posting requirements of the *EBR*.

Table 2: Selected Unposted Decisions

Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)

RURAL JOB STRATEGY FUND

Unposted Decision

- A \$30 million fund to be invested in rural Ontario through partnerships that will enhance the quality of Ontario products, capitalize on marketing and export opportunities and encourage the adoption of new or upgraded information technology.
- Ministry promotional materials, released in Oct. 1997, state that the development of Environmental Management Systems (EMSs) by pork farmers, wine producers and other farmers are eligible for this program.

Ministry Rationale

- The program is financial in nature and is intended to address major barriers to rural economic development.
- Consultations on the program revealed that rural clients want to ensure that their business projects are standardized to satisfy environmental management practices. Thus, only projects that comply with current environmental standards and laws will be approved. The program does not fund the development of new environmental management standards.
- The *EBR* did not apply to the program and the ministry concluded that it was not required to post it on the Registry.

ECO Commentary

- The development of EMSs by farmers can have positive environmental effects.
- This decision has environmental significance but did not need to be posted since it falls under the exception for predominantly financial and administrative decisions.
- Since the decision has environmental dimensions, in the future the minister is encouraged to use his discretion to post s. 6 information notices about these decisions on the Registry.
- The ministry did not indicate whether the SEV was considered.

Citizenship, Culture and Recreation (MCzCR)

ALLOCATION OF GAMING FUNDS

Unposted Decision

- Consultation process to determine how to allocate gaming funds to charities, with individuals and organizations from many sectors including the environment.
- Decision could have implications for the funding of environmental non-government organizations (ENGOS).

Ministry Rationale

- Not posted because the consultation did not contain any environmentally significant matters.

ECO Commentary

- The ECO agrees that decision was not environmentally significant. However, posting would have been a way to inform environmental groups about the opportunity to apply for funds.

Environment (MOE)

DELORO MINE CLEANUP

Unposted Decision

- In April 1997, MOE announced it would begin the cleanup of the abandoned Deloro mine site, on the Moira River near Belleville. According to MOE, this is one of Ontario's most contaminated sites. MOE took control of the mine in 1979 and has been involved in studies, investigations and remediation in the intervening years. Over the past few years, MOE has worked with the Ministry of Northern Development and Mines to take care of collapsing mine shafts and other hazard problems at the site. MOE is now ready to do the final work to address the mine's environmental problems. As of April 1997, more than \$9 million has been spent cleaning up the site.

Ministry Rationale

- MOE's involvement with and intention to clean up the mine pre-dates the *EBR*.
- MOE assured the ECO that it will be following the *EBR* requirements in posting notices of the necessary certificates of approval on the Registry for public comment as part of the implementation of this project.

ECO Commentary

- The ECO will monitor MOE's involvement to ensure that instruments for the project are posted on the Registry. None were posted in 1997.
- In the fall of 1997, a private prosecution was launched by a Kingston environmental group in relation to alleged contraventions of the *Fisheries Act* caused by effluent from this site.
- This case highlights the cost of cleaning up abandoned mine sites, a theme discussed in the ECO's 1996 Annual Report in relation to amendments made to the *Mining Act* to loosen the financial assurance and mine cleanup rules that apply to mine developers. Some estimates suggest there are nearly 300 abandoned mine sites in Ontario that are in need of rehabilitation because they pose serious environmental or safety hazards.

Health (MOH)

BILL 152, SERVICES IMPROVEMENT ACT

Unposted Decision

- Contained an amendment to the *Health Protection and Promotion Act* which would have removed the duty of the Chief Medical Officer of Health of the province to keep informed of matters related to occupational and environmental health. This amendment would have left a gap in the monitoring of environmental health matters of regional or provincial scope, and was thus an environmentally significant decision.

Ministry Rationale

- The amendment in question was removed during clause-by-clause committee hearings in November, thus was no longer an environmentally significant decision.
- Bill 152 received Third Reading from the Legislative Assembly and passed into law in December 1997.

ECO Commentary

- ECO commends the ministry for removing this amendment to the *Health Protection and Promotion Act*.

Table 2: Selected Unposted Decisions

Labour (MOL)

DISCUSSION PAPER ON *OCCUPATIONAL HEALTH AND SAFETY ACT*

Unposted Decision

- Release of discussion paper for consultation as part of comprehensive review and reform of act.

Ministry Rationale

- Discussion paper does not propose changes to the act, hence does not fall under s. 15 of the *EBR*.
- Review of the act is not environmentally significant.

ECO Commentary

- ECO urged the ministry to post notice on the Registry.
- The ministry SEV states: "It is recognized that, on occasion, measures taken by employees to control worker exposure to hazardous materials may present a problem for the external environment."

Northern Development and Mines (MNDM)

BILL 120, *RED TAPE REDUCTION ACT (MNDM)*, 1997

Unposted Decision

- Cabinet may prescribe circumstances where a proponent need not comply with a provision in *Mining Act* regulations respecting rehabilitation of mining lands.
- Eliminates requirement to stake out and record placer mining claims.
- This legislation was proclaimed on December 18, 1997.
- MNDM Director of Rehabilitation will monitor industry practices.

Ministry Rationale

- Changes in the act are positive and will be environmentally beneficial because they do not reduce requirements for closure plans as long as the standards met by the proponent exceed requirements under existing regulations. Thus, the proposal will have no significant environmental impact.

ECO Commentary

- The ECO recognizes that proponent compliance with higher mining land rehabilitation standards could increase environmental protection.
- Ministry response implies that there are no environmentally significant impacts if the proposal is intended to have positive outcome; however, *EBR* provisions apply to both positive and negative environmental impacts.

Transportation (MTO)

MUNICIPALITIES TO FUND LOCAL TRANSPORTATION SERVICES FULLY

Unposted Decision

- Part of "Who Does What."
- Government claims it will reduce duplication in delivery of local transportation services by requiring municipalities to fund municipal transit and airports, GO Transit, and highways and ferries serving local needs.

Ministry Rationale

- Predominantly financial and administrative, hence not necessary to post on Registry or consider SEV.
- Municipalities responsible for maintaining standards of environmental protection and complying with the *Environmental Assessment Act*.

ECO Commentary

- Inappropriate exception.
- Failure to consider SEV.
- This decision seems likely to cause a decline in public transit ridership in many Ontario cities. Road vehicles are Ontario's number one source of smog-causing pollution, accounting for approximately 30 per cent of NOx and VOC emissions. Increased emphasis on public transit would help Ontario to achieve its smog reduction targets.

EXPANSION OF HIGHWAYS 11 AND 69

Unposted Decision

- Portions of Ontario Highways 11 and 69 to be expanded to four lanes from the existing two lanes.

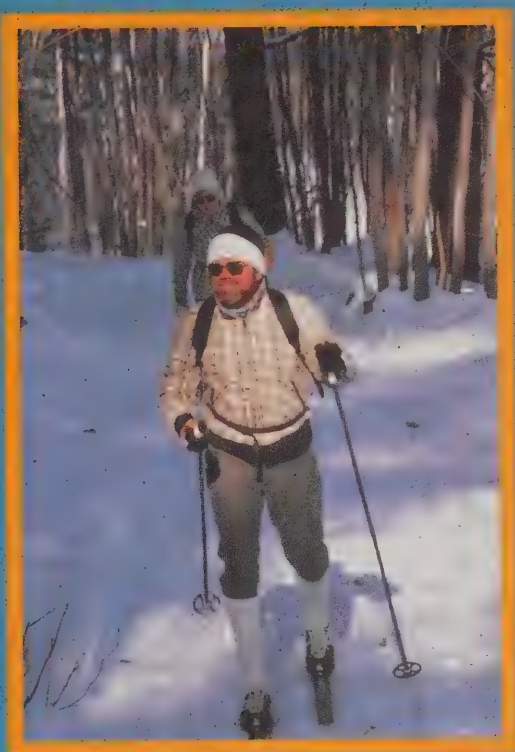
Ministry Rationale

- Road-building qualifies as an approved undertaking under *EAA* and therefore is exempted from *EBR*.
- Project was subject of extensive environmental assessment under *EAA*. No requirement to post either as a proposal or as an exception because of equivalent participation.

ECO Commentary

- The ECO found that the decision to expand the highways could have been characterized as a plan or objective of MTO, thereby constituting a "policy" for purposes of the *EBR*. Had the decision been exempt from the *EBR* public notice and comment requirements due to the equivalent public participation provision in s. 30 (1) (a), there would still be a need to post an exception notice on the Registry, which MTO did not do.
- The ECO encourages ministers to post these types of proposals as policies to alert members of the public to the nature of ministers' decisions and to provide greater transparency.

FOUR



Detailed Reviews of Ministry Decisions and Proposals

Air Quality

The Ministry of the Environment (MOE) maintains that overall air quality has improved in Ontario since 1970. However, the ministry also acknowledges that smog and fine particulates remain chronic problems. Over the past two years, MOE has announced almost a dozen initiatives aimed at improving air quality, and the ministry's 1997 business plan sets targets and deadlines to reduce pollutants that contribute most to smog. During the past year, I reviewed some of these decisions, and I will continue to monitor whether the outcomes are consistent with the ministry's Statement of Environmental Values and the purposes of the EBR, and how the public was involved in ministry decision-making.

Reducing Air Pollution

In June 1996, MOE posted a Smog Discussion Paper on the Environmental Registry that pointed out that Ontario has among the highest smog levels in Canada, and that human death rates from respiratory problems could be linked to exposure to inhalable particulates. The discussion paper, which was supported by technical documentation detailing scientific findings and uncertainties, presented key ministry goals over the next 20 years: to reduce nitrogen oxides (NOx) and volatile organic compounds (VOCs) by 45 per cent by the target year of 2015. The ministry hopes that this will reduce ozone exceedances (or "bad air days") by 75 per cent. The discussion paper received extensive public consultation, including a two-day workshop attended by more than 170 people.

During the public consultation, people recommended the ministry put a new emphasis on public transit and energy conservation measures, and more emphasis on air quality monitoring. They said the emission reduction targets in the discussion paper were too weak. Many people requested that MOE establish interim targets, with benchmarks that would measure progress well before 2015.

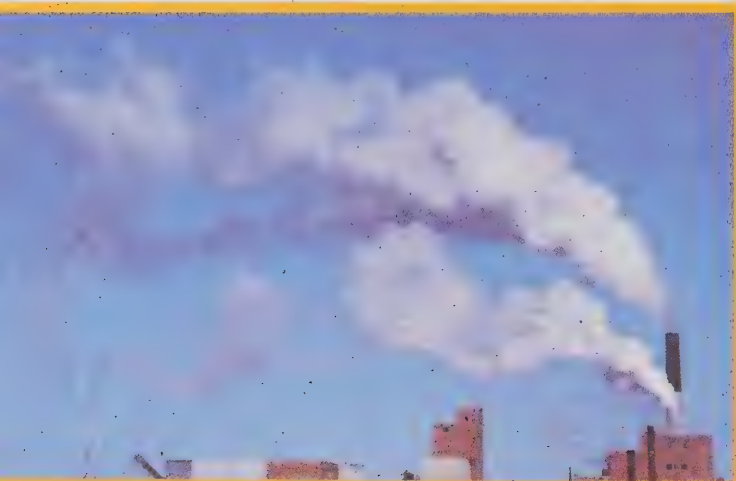
In January 1998, MOE released its smog plan, "A Partnership for Collective Action." However, none of the environmental organizations that were consulted endorsed this plan, citing the lack of detail and the need for stronger performance targets.

In fact, MOE's own emissions projections, which factor in future economic growth, show that even if all existing and proposed pollution control activities are carried out over the next 18 years, Ontario's overall air quality is likely to be somewhat worse in 2015 than it is today.

Obstacles to Smog Reduction

Plan of Action Goes Only Halfway: MOE's Smog Plan, released in January 1998, describes a set of plans and activities that would, at best, get Ontario only halfway to the stated smog target by the year 2015. There is no detail on how the other half of the needed reductions can be achieved.

Funding Priorities Unclear: Although MOE's 1997 business plan describes air quality as a "major focus," the same business plan allocates only 3 per cent of the ministry's environmental protection budget to clean air. MOE notes that this is an underestimate of actual spending on clean air, since its programs for "compliance" and "healthy ecosystems" also include some air-related work, which is difficult to quantify in the budget.



Smog Accord Voluntary: Although MOE acknowledges that air quality improvements over the last 25 years are due to regulation by the province, the ministry now

plans to use a voluntary approach to cutting air pollution. Industry representatives who endorsed MOE's Smog Plan, including chemical and petroleum producers and the iron and steel sector, agree that Ontario has a smog problem and support the reduction target. But the workplans they develop for the Smog Plan will not be binding. Nor do they bind their companies or their sector to meeting targets, nor commit to specific reporting requirements on annual emissions of NOx and VOCs.

MOE has told the ECO that "...the Ministry of the Environment recognizes that 'Ontario's Smog Plan' has not provided all the solutions to obtain its ultimate goal in year 2015.... The first year of the Ontario Smog Plan process focussed on the organization of work groups and the identification of emission reductions. Key areas of focus over the next year include implementation of emission reduction plans; completion of the inhalable/respirable particulate management strategy; development of public acceptance and transportation demand management strategies; development of a performance evaluation, monitoring, reporting and verification process; and development of alternative approaches to further the implementation of emission reduction plans. We also need to ensure these and future actions are implemented and backstopped with reduction agreements or appropriate performance standards."

Recommendation 3

MOE should complete and publish a full list of the emission reduction actions that are still needed to achieve its stated air quality targets by the year 2015. The ministry should also establish interim targets, and should provide the public with annual updates on emission reductions achieved, trends in total emissions and air quality concentrations, and reductions still needed to meet near-term and long-term targets.

No Plan to Upgrade Old Certificates of Approval:

MOE issues certificates of approval (Cs of A) for new, altered or expanded facilities that may be sources of air pollution. The C of A specifies how the facility must be built and operated so that air quality standards are not likely to be exceeded. Once a facility is built according to the C of A, MOE usually does no follow-up monitoring, and certificates of approval do not have expiry dates. MOE amends them only in rare cases where there is strong concern and clear evidence of a problem. This means that even if MOE sets new, more rigorous air quality standards for the province, there is no connected province-wide program to upgrade old certificates of approval. MOE may try to get individual facilities to improve, but faces resistance when it uses this case-by-case approach. For example, in 1997 when Falconbridge applied for an amended C of A for its Sudbury smelter because it was changing its refining process, MOE asked the company to cut particulate and sulphur dioxide emissions as part of the change. When Falconbridge launched an appeal, saying the ministry's proposal was unreasonable, unduly onerous and redundant, MOE backed down.

In my 1994-1995 Annual Report, I raised concerns about outdated certificates of approval for air pollution sources. But updating these Cs of A to reflect more stringent air quality standards does not seem to be a priority for the ministry. It is not mentioned in MOE's 1997 business plan, nor is it a component of the new Smog Plan.

No Plan to Improve Public Transit: Road vehicles are Ontario's number one source of smog-causing pollution, accounting for approximately 30 per cent of NOx and VOC emissions. MOE staff acknowledge that an increased emphasis on public transit would help Ontario to achieve its reduction targets. However, in January 1997, the Ministry of Transportation (MTO) announced that the province would eliminate all operating and capital funding for public transit in Ontario, effective January 1, 1998. This MTO decision was made without consulting the public, since the ministry called it an "administrative and financial" decision that could thus be excepted from posting on the Environmental Registry. While MOE is charged with reducing air pollution, it does not have jurisdiction

over improving public transit. MTO, the Ministry of Municipal Affairs and Housing (MMAH), and municipalities determine transit policy. Currently, no ministry has measurable targets for improving public transit.

Recommendation 4

All ministries, especially MMAH and MTO, should ensure their policies and priorities regarding land use planning and public transportation support MOE's efforts to control vehicle emissions. MMAH, MTO and MOE should develop a joint strategy to address the problem of the steadily growing vehicle population in Ontario, which is a major barrier to improving air quality.



More Coal Burning by Ontario Hydro: MOE's smog reduction plan is counting on Ontario Hydro's coal-burning power plants to cut their NOx emissions very significantly, by 19,000 tonnes by 2000. These cuts were planned in 1991 and assumed continued operation of Hydro's nuclear plants. However, Hydro's unexpected announcement in August 1997 that it was shutting down seven nuclear reactors and shifting to more burning of fossil fuels has cast doubt on Hydro's ability to achieve these cuts to emissions. Ontario Hydro is now predicting that its fossil fuel emissions of several air pollutants will rise by about 70 per cent between 1996 and 1998.

Some Encouraging Signs: Potential for Improvement

The Drive Clean Program: In December 1997, the Ministry of the Environment posted a decision on the Environmental Registry to begin a Drive Clean program – a vehicle inspection and maintenance program designed to reduce pollutants coming from cars, trucks and buses. Road vehicles are Ontario's number one source of smog-causing pollutants, and their contribution to smog is expected to grow. The number of kilometres logged by passenger vehicles increased 17 per cent over the last decade; that growth rate is projected to continue over the next 10 years. The Drive Clean program has the potential to be a good tool to fight smog, but if it is the only tool, its impact will be limited by the increasing use of cars.

Scheduled to begin in fall 1998 in the Greater Toronto Area and Hamilton, the Drive Clean program, MOE says, will be expanded to other Ontario centres with serious smog problems within two to four years. The program is expected to cut the annual release of smog-causing pollutants by 22 per cent and microscopic dust particles by 6 per cent. A similar program has been running in Vancouver since 1992, and audits there have shown emissions cuts of almost 20 per cent.

However, the success of the Drive Clean program depends on the many technical details that have been laid out in a Code of Practice recommended by the Canadian Council of Ministers of the Environment. Although Ontario signed the Code of Practice, it is not following some of its key recommendations. For example, Ontario will allow both testing and repairs to be done in the same shop, creating a potential conflict of interest and the risk of fraudulent testing and repair work. The Code of Practice recommends testing annually, especially for older cars, but Ontario will be testing cars and light trucks only every other year. MOE's other key procedures have not yet been finalized: for example, how repair technicians will be trained; how quality control specifications will be applied; and how audits and monitoring programs will be put in place. The ECO will follow this issue.

Recommendation 5

In developing its Drive Clean program, MOE should adopt the best practices of other jurisdictions and the recommendations of the Canadian Council of Ministers of Environment, particularly on issues such as the separation of vehicle testing facilities from vehicle repair facilities, and the training and certification of repair technicians.

Recommendation 6

MOE should ensure that emission trends of the Ontario vehicle fleet are accurately monitored and reported, and that the effectiveness of the Drive Clean program in reducing emissions is accurately evaluated through periodic independent audits and public reports.

Emissions Trading – An Innovative Approach:

Although economic tools have long been discussed as an effective way of achieving environmental goals, they have rarely been used. The Ministry of the Environment (MOE) is currently studying one economic policy instrument in particular – emissions trading.

MOE posted a proposal in June 1997 relating to its Pilot Emission Reduction Trading (PERT) project, describing it as a cost-effective option for reducing air contaminant emissions. The pilot project is intended to provide insight into the potential value of emissions trading in Ontario as a complement to the regulatory approach to achieving environmental goals.

The initiative is industry-led. Companies can earn "emission reduction credits" by reducing their emissions below existing voluntary commitments. These credits can be sold to other companies that have difficulty meeting their commitments. The ministry's role, according to MOE's proposal, is to establish emission targets, to audit trades to make sure that emission reductions are real, and to provide advice on regulatory and technical matters. The program focuses on the Windsor-Quebec corridor and on emissions of NOx and VOCs. It is intended to be compatible and perhaps eventually "merge-able" with a simi-

lar program in place in the northeastern United States.

Once the PERT project is completed, people involved in the initiative will make recommendations on the potential for emissions trading as a pollution reduction tool. Companies taking part in PERT are asking MOE to sign a Letter of Understanding (LOU) that would give formal recognition to the emission reductions they achieve during the pilot project as counting toward future requirements.

The proposal received nine comments, all of which were supportive of the project. The ECO's preliminary review indicates that emissions trading as a tool for pollution reduction would benefit from transparency and accountability measures such as an accurate, up-to-date inventory of emissions, an agreed-upon cap on total emissions for a given locality, and the institutional ability to verify reduction rates. The ECO will continue to monitor this initiative as it evolves.

Ontario Submission to U.S. On Smog: In March 1997, MOE made a formal submission to the U.S. Environmental Protection Agency, requesting that the U.S. adopt more rigorous standards for particulates and ground-level ozone. On hot summer days, the MOE submission argued, more than 50 per cent of the ozone affecting Ontario comes from U.S. sources.

The Minister of the Environment stated in a news release that if the proposed new U.S. air quality standards were not strengthened, it would be difficult to ask Ontario industries to commit to strict standards. However, Ontario's negotiating position is weak. Although some of our air quality guidelines have lower concentrations than the new U.S. standards, Ontario numbers are only guidelines and unenforceable. As well, Ontario's numbers are frequently exceeded in our cities. For example, Ontario's new guideline for inhalable particulates is exceeded for several days or even weeks each year in Windsor, Hamilton, Toronto, Sault Ste. Marie, and London. In contrast, the standards set by the U.S. *Clean Air Act* will have to be met in every U.S. state by 2012.

Recommendation 7

MOE should set an enforceable, regulated standard for inhalable particulates, and develop a comprehensive compliance program to ensure the standard is met.

Low Smog Gas: Ontario has been slowly reducing the volatility of gasoline since 1989. In April 1997, MOE posted a new regulation on the Environmental Registry further reducing the smog-forming fumes of summer-grade gasoline. This latest cut is expected to reduce Ontario's total VOC emissions by about 2 per cent. But since Ontario's total VOC emissions are expected to grow by about 10 per cent per decade, this latest change to low smog gas may not improve air quality noticeably.

Setting Standards for Air Quality: MOE's 3-Year Plan

Many of Ontario's standards for air pollutants are out of date. In October 1996, MOE posted a proposal on the Environmental Registry to set 70 new regulatory standards for air contaminants over a three-year time span. During 1997, my staff monitored the ministry's progress on this initiative.

MOE's planned first step was to draft ambient air quality criteria (AAQC), which are typically set at concentrations where no adverse effect is observed to people or to the environment, based on continuous exposure. However, AAQC are not directly enforceable. MOE's planned next step was to negotiate new Point of Impingement (POIs) standards with affected industries, along with public consultation. POI standards are enforceable, but in the process of negotiation, their concentrations are adjusted up to levels that are agreed to be feasible given socio-economic and technical factors. While POI concentrations for any given pollutant can be significantly higher than for the AAQC, MOE says they are set at levels that are still considered protective of human health and the environment.

Original Goals – Cut Back

Because MOE staff resources needed to negotiate the POI standards with Ontario industries are now limited, the ministry has scaled back its plans. MOE is now proposing to take both steps only for selected toxic pollutants – “substances of greatest concern.” For other pollutants, only guidelines – which are unenforceable – will be developed.

Consultation Plans – Unclear

MOE's plans for public consultation on the draft AAQC and POI standards for each of the priority contaminants are not clear, even though the ministry's earlier consultation on its original standard-setting proposal raised a number of concerns. Those meetings were held first only with industry, and other groups were excluded. Industry representatives were concerned about being consulted only at selected points in the process, and they noted that some of MOE's scientific information was out of date. They were also concerned whether the new standards would apply to both existing and new facilities, and how standards would be phased in. MOE plans to negotiate POI standards on a case-by-case basis with Ontario industries. Without transparent mechanisms to evaluate economic or technical feasibility, both industry and environmentalists may be reluctant to participate, or to accept the outcomes of negotiation.

Implementation Plans – Undecided

MOE has said that regulatory POI standards for the priority contaminants would apply to both new and existing facilities. It is the responsibility of each facility, according to MOE, to ensure that the new standards are being met; the ministry monitors compliance through spot audits of certain sources. At this point, MOE is beginning a pilot project to collect data on emissions of air toxics from 10 major facilities in Ontario. Although MOE's SEV states that the ministry will continue to enforce environmental laws and to monitor changes in the environment, it is unclear whether the ministry will have the resources to ensure that thousands of facilities across Ontario are complying with the new standards.

Recommendation 8

MOE should ensure that its Three-Year Plan For Standard-Setting includes the following features:

- a fair and transparent process for considering economic and technological limitations when developing POI standards from ambient air guidelines;
- a province-wide compliance program with public progress reports to ensure that facilities are meeting newly regulated air standards;
- monitoring and reporting by facilities emitting regulated air contaminants, permitting the ministry to develop and publish accurate emission inventories;
- regular updates on the Plan posted on the Environmental Registry.



Changes to the Management of Ontario's Natural Resources

In 1997, the Ministry of Natural Resources (MNR) began a massive overhaul of how it carries out land use planning. A great deal of public attention and MNR staff resources are focussed on this effort. But at the same time MNR has also released a flurry of major new forest policies. To understand their implications for Ontario's forested lands, these initiatives have to be considered together.

What are the forces shaping Ontario forest policy?

Environmental Assessment Board Decision of

1994: In 1994, the Environmental Assessment Board (EAB) released its decision on MNR's Class Environmental Assessment for Timber Management – imposing 115 terms and conditions on the ministry, many with specific deadlines, aimed at strengthening the environmental aspects of forest management. MNR's 1997 Registry postings show that the ministry is still trying to meet some of those conditions, and trying to adopt an ecosystem, science-based approach for forest management.

Increasing demand for wood: The wood demand in Ontario is approaching the maximum sustainable harvest, and this means increased competition for available stands of forest.

Intensifying forest resource conflicts: There are chronic and increasing land-use conflicts between the northern Ontario tourism industry and the forest industry. Outfitters often argue that tourists won't stay at lodges where cut-over lands are visible or chainsaws can be heard. In their efforts to change the local forest management plans, tourist operators have often used the *Environmental Assessment Act* to halt forest operations for months or even years at

a time. This makes for an unpredictable regulatory environment for both industries.

Pressure to complete parks system: Ontario has committed to protect a representative example of each of the province's natural features by the year 2000. But in April 1996, World Wildlife Fund gave Ontario a failing grade in the protection of its wilderness areas, noting that only five out of 65 candidate wilderness areas had full protection. Forestry companies are worried about the implications new parks will have for their wood supplies.

Deep cuts at MNR: Between 1995 and 1998, as part of government-wide budget cuts, the forest management budget and staff at MNR were cut by about 50 per cent. This cut affects most, if not all, forestry decisions the ministry is making.

As a result of all these diverse pressures, MNR is trying to do more with less – in some cases, with much less. Through the policy initiatives described in the following pages, MNR is attempting to resolve long-standing conflicts; shift responsibility, accountability and costs to other parties; involve the public in decision-making; and at the same time improve the management of forests and natural areas.

Can the Public Influence Decisions?

Cochrane District

Registry #PB6E2004

description When a committee set up by MNR was unable to resolve conflicting interests and agree on a remote tourism strategy, the ministry developed its own Cochrane Remote (Wilderness) Tourism Strategy. MNR's proposed strategy included setting aside a remote tourism management zone, containing 127,000 ha and more than 120 lakes, where forestry would be prohibited and access to fishing and hunting would be by air, canoe, or snowmobile only and not by roads. Two other remote tourism areas would allow forestry operations only under limited conditions. Forest harvesting would be the primary focus of a fourth area of the district, with increased access for fishing and hunting.

public comments Forest industry representatives argued that the remote tourism management zone would impact on local economic interests.

decision After the economic analysis MNR undertook in response to these forestry concerns suggested that remote tourism industry may have some greater economic benefits to the area than timber harvesting, the ministry made only minor changes to the strategy. Careful logging activities were permitted in a few fringe areas of the remote tourism management zone.

Can the Public Influence Decisions?

Rossport Islands, Lake Superior

Registry # PB5E2002

description Because of increasing pressures from tourism and mining, MNR created a unique citizen-only planning board to develop a resource management plan for the islands' Crown lands. The board's draft plan outlined the land uses and activities that would be permitted on the Rossport Islands.

public comments Local residents had major concerns: the draft plan guidelines had been extended to privately owned land over which MNR has no jurisdiction, and the public had not been adequately consulted, especially First Nations and private land owners.

decision Because the citizen-led planning board made no changes to their resource management plan in response to public concerns, MNR withdrew its support and rejected the plan.

Can the Public Influence Decisions?

Nipigon District

Registry # PB7E1001

description In February 1997, MNR posted a proposal on the Environmental Registry that would allow permanent road access on Black Bay Peninsula, located on the north shore of Lake Superior, to allow a forest company year-round access to the area.

public comments The proposal drew substantial media attention and public comment: a permanent road would mean the loss of one of the last remaining wilderness areas on Lake Superior, leading to habitat destruction and increased hunting, with negative effects on moose and on other wildlife, including fish.

decision Because of public opposition and media attention, MNR decided not to permit permanent road access to the Black Bay Peninsula.

Lands for Life

What is it?

In February 1997, MNR announced its decision to conduct an ambitious review of land use planning and resource management on Crown lands. MNR's decision, which was posted on the Environmental Registry in April 1997, described how land use strategies will be developed for the huge central area of Ontario (46 million hectares) that is important to the forest industry.

Previous public consultation had shown that many people supported MNR's proposal to develop a new system of land use planning. It was widely acknowledged that the existing District Land Use Guidelines approved in 1983 were out of date, and did not effectively address the increasing and costly land use conflicts.

Under Lands for Life, MNR has divided central Ontario into three large planning areas. Regional Round Tables, one in each planning area, will draft recommendations on how land and resources should be allocated. Members of the Regional Round Tables, who must be residents of their area, were appointed by the minister. They will have to sift through enormous amounts of information provided by ministry staff, consider hundreds of submissions from the public, and recommend which areas of land should be allocated to forestry, to tourism and to natural heritage protection. MNR has also laid out some policies to guide the Round Tables:

- **Nature's Best** covers natural heritage, and was posted on the Environmental Registry in March 1997. Nature's Best reconfirms MNR's goal of completing the parks system, and lays out an action plan for identifying potential parks and protected areas.
- The **Resource-Based Tourism Policy** sketches out how tourist outfitters will be allocated specific resources such as lodge sites, land, fish and wildlife. In return, the outfitters will be responsible for costs and stewardship of the resources. Some preliminary information was posted on the Environmental Registry in August 1997 for public comment. MNR is still working with tourist outfitters and the Ministry of Economic Development, Trade and Tourism to resolve issues such as eligibility criteria, allocation agreements, and resource inventories.

- **New approaches to Forest Tenure:** Although MNR has not set formal policy, it is expected that extended forest tenure will be a key outcome of Lands for Life. Currently, forestry companies receive forestry licences which last 20 years and grant them exclusive rights to harvest timber. But forestry interest groups want tenure in perpetuity, arguing that companies under the existing system have little incentive to plant and care for seedlings they may not be allowed to harvest. They also argue that tenure-holders should be compensated if tenured land were to be re-allocated to uses such as remote tourism or parks. MNR has developed draft wood supply agreements in 1997 that would grant companies "compensable tenure," and the minister confirmed his willingness to negotiate the length of tenure, based on scientific and business principles. MNR has decided to postpone the development of the enhanced tenure arrangement until later in the Lands for Life process.

What are the Implications of Lands for Life?

Lands for Life will change the landscape of Ontario – literally. It will affect how and where forestry and other land use activities are carried out, how much access Ontarians will have to public lands, and what areas will be protected.

Round Tables will have to wrestle with the question of how much land needs to be set aside for parks and protected areas. There is a great deal of support among





environmentalists for protecting, at a minimum, from 15 per cent to 20 per cent of the Crown lands. However, public consultation carried out so far by one of the Round Tables indicates that many residents of northern Ontario are opposed to the creation of additional parks. On the other hand, some people are concerned that MNR's approach of protecting one example of each representative feature of Ontario's natural heritage is not enough, especially if the example is very small. Ecologists also believe that interconnecting corridors are necessary for real habitat protection, rather than the fragmented islands of habitat MNR may be planning to protect.

Recommendation 9

MNR should use the "precautionary principle" stated in its SEV when it establishes the extent and sizes of land to be protected as Ontario's natural heritage features.

The Round Tables are also hearing debates about whether forestry, hunting and remote tourism should be allowed in "protected" areas, but it is not clear if Round Tables will be making recommendations on this issue. Many Ontarians believe that public lands should be open to multiple uses, and they oppose the dedication of resources to any one use. For example, they worry about the proposed allocation of lands to remote tourist outfitters, which might restrict access to public lakes.

Ontario's Forest Industry at a Glance:

- 89,000 direct jobs and 74,000 indirect jobs in primary forestry industries in Ontario in 1996
- \$9 - 14 billion worth of sales annually
- 29 communities in northern Ontario have more than 25% of the local workforce directly employed in the industry

sources: MNR and Natural Resources Canada, 1997

Resource-Based Tourism at a Glance:

- 1600 resource-based tourism establishments in northern Ontario; about 800 of these are in remote areas with no road access
- \$200 million worth of spending annually
- about 10,000 direct and indirect jobs in northern Ontario from resource-based tourism

source: MNR, 1996

Parks and Protected Areas:

- Provincial parks protect both rare and representative features of our natural heritage, while providing opportunities for outdoor recreation, interpretation and tourism.
- MNR says that with the regulation of several new parks and conservation reserves in 1997, Ontario's 272 provincial parks and 23 conservation reserves encompass 7.2 million hectares and make up about 7% of the province's lands and waters.
- MNR estimates that existing parks and conservation reserves represent about 8% of the Lands for Life planning area.

source: MNR, February 1998

Most important, the Round Tables will have to recommend how much forest land is needed for forestry in Ontario. They need to consider many factors: not only complicated trends in wood supply and demand, but also the many policies that affect how forests grow and how they are used. MNR's forest policy has been in turmoil in recent years, due to the conflicting pressures of the 1994 *Crown Forest Sustainability Act*, the 1994 EAB decision, the 1993 Policy Framework for Sustainable Forests, and the later budget cuts. Many new forest policies were drafted or finalized in 1997 (some of these policies are described on pages 42-44). It is hard to predict how these largely untried approaches will work in practice, but the Round Tables will have to take whatever information is available, and draft very far-reaching recommendations. And in most cases MNR will have to put these new policies into practice.

Timing and Lack of Information are Major Concerns

Because the Lands for Life process has such momentous implications, it has received a lot of public scrutiny. Significant concerns have been raised about the tight timetable, about fairness in public consultation, and about the quality of information available to the public and the Round Tables.

For example, in 1997 the ECO received an application for review of the Lands for Life process which had specific criticisms: the public is not adequately represented on the Regional Round Tables, whose members must reside in the planning area itself; input from southern Ontario is limited; the Round Tables are weighted in favour of industry; and there are no specific guidelines or policies for how the Round Tables will arrive at their recommendations.

In an attempt to address some of these concerns, MNR has increased consultation in southern Ontario, issued some guidelines for Round Tables, and allowed the Round Tables an additional three months to draft their recommendations. The earlier District Land Use Guidelines took more than 10 years to complete. In contrast, the Lands for Life process is to produce decisions about long-term resource allocations for much of Ontario within a very

short time. The public will be consulted on these issues at different stages during the year; MNR is proposing that people have at least 30 days, and possibly more, to comment.

The Round Tables' tight schedule does not allow MNR staff enough time to compile detailed analyses of potential natural heritage areas or to identify existing old growth forests. MNR proposes that the boundaries of the new protected natural heritage areas be finalized by regulation in 1999. MNR has assured the ECO that in the second phase of planning, when more detailed zoning maps and specific land uses will be finalized, there will be opportunities to revisit and refine the area's natural heritage boundaries.

I remind the ministry that making such crucial decisions requires adequate time and information. This is underscored by MNR's Statement of Environmental Values, which states that:

"...the social and environmental values society places on the natural environment must be recognized, evaluated and considered fully and fairly in the decision-making process.... Our understanding of the way the natural world works – and how our actions affect it – is often incomplete. This means that we exercise caution, and special concern for natural values in the face of such uncertainty, and respect the "precautionary principle."

Recommendation 10

MNR should ensure that the Round Tables have the time and the background information on forestry resources, natural heritage features and tourism issues to allow them to make informed recommendations.

Recommendation 11

MNR should provide a mechanism for periodic review of the Regional Land Use Strategies, and for public notice and comment using the Environmental Registry.

New Forestry Policies

In 1997, MNR proposed a number of important new forestry policies. Although they show that MNR is trying to take a more science-based, ecosystem approach to managing Ontario's forests, it is too early to say how well they will be implemented or whether there will be funding to make them all happen. The ECO will monitor future progress on these policies.

Setting wood supply targets: MNR released its new Forest Resources Assessment Policy (FRAP) in July 1997. In the future, the ministry plans to assess Ontario's forest resources, including timber supply and forest conditions, every five years, using a new "bottom-up" approach to setting targets for wood supply, harvest and regeneration, based on actual local assessments of forest capability. FRAP replaces the ministry's old "top-down" approach to setting targets by government decree, which was more arbitrary and did not consider what the ecosystem could produce.

Regional wood supply strategies will be critical documents for the Regional Round Tables when they make their recommendations for long-term allocations of land and resources in the regions they are dealing with. MNR says that draft wood supply strategies have been provided to the Round Tables.

Approach to Wilderness – unchanged: In April 1997, MNR posted its proposal for an "Approach to Wilderness" for a 30-day comment period, but the ministry's decision was posted the same day the comment period ended, giving little time for consideration of public comments. This is not a new policy direction, but simply a restatement of the ministry's existing commitment to complete Ontario's wilderness park system. People commenting on the policy were very unhappy that MNR provided no guidance on how Ontario's remaining roadless wilderness in areas outside parks would be protected. MNR responded to these concerns by committing to discuss this issue with the public.

Timber Supply Projected to Decline

The first assessment of Ontario's Forest Resources under the FRAP program was released by the Ministry of Natural Resources in June 1997 and showed that the province's timber supply is projected to decline gradually over the next 60 years, while industrial demand for timber continues to rise steadily. Shortfalls in softwoods, such as the commercially valuable spruce and pine, will be seen as soon as 2015, and will not rebound until late in the 21st century, when the trees planted in the 1970s and 1980s reach maturity. The assessment document lays out some possible approaches to addressing the problem. These include:

- Creating more forest, either in the "backlog" of logged areas that have not renewed satisfactorily, or in deforested lands in southern Ontario.
- Opening more Crown forest to timber harvest – for example, "certain forest reserves" or the millions of hectares of forested land north of currently permitted forestry operations.
- Increasing silvicultural investment. Current funding, which comes from forest industry fees, is about 20 per cent lower than 1994 spending, and much lower than in the late 1980s and early 1990s, when MNR was funding regeneration efforts.
- Improving forest management decision-making – for example, improving forest inventories, regeneration information, and better coordinating timber supplies.
- Accepting limitations in timber supply. Setting aside areas of the forest for tourism or natural heritage protection may reduce available timber supply, but may also provide an acceptable overall balance of benefits.

Recommendation 12

MNR should clarify its policy on protection of roadless wilderness areas outside parks, and provide direction on how the policy should be applied during forest management planning.

Old growth forests: In July 1997, MNR posted its proposal for a Conservation Strategy for Old Growth Forest Ecosystems on the Environmental Registry. The strategy has not been approved yet, but has been provided in draft form to the Lands for Life Round Tables as provincial policy direction.

Public submissions to the Lands for Life Round Tables criticized MNR's lack of action on old growth and its plans to protect only one small example of old growth in each site district. Most of the ministry's work – developing detailed definitions and inventories of old growth stands – is yet to come. Unfortunately, this information will not be available in the crucial Phase I of the Lands for Life process when targets will be set for old growth conservation. MNR has told the ECO that "...if additional protected areas are required as a result of implementation of the 'Old Growth' strategy, this option will remain available even after phase 1 of Lands for Life."

The ECO will monitor whether public concerns are resolved through MNR's strategy.

Monitoring compliance with forestry rules: To cope with budget and staff cuts, MNR announced in April 1996 that the forest industry would have to take on more responsibility for some aspects of monitoring and compliance with forestry rules. In early 1997, the ministry released its Forest Compliance Strategy. When it was posted as a proposal on the Environmental Registry, it received criticism for its vague language and its shift toward industry self-compliance.

MNR has developed a Forest Compliance Handbook, and in spite of requests from the ECO, the policies, procedures and guidelines in the Handbook were approved – and several have since been further revised – all without public consultation. During 1997, MNR also developed

new inspection and compliance policies as part of its transfer of responsibilities to the forest industry. Although the new policies were used to train both forest industry and ministry staff during 1997 and are environmentally significant, they were not posted on the Environmental Registry for public scrutiny and comment. MNR now says that it will post a policy proposal on this new compliance program in 1998. However, decisions have already been made, MNR and industry staff have already been trained, and the program will be fully in place by April 1998.

New guidelines for forestry management: The Environmental Assessment Board ordered MNR to prepare new guidelines that would protect the physical environment from damage during forestry operations, such as soil compaction and rutting, soil erosion and nutrient loss, and impacts on surface and groundwater. The proposed guidelines, posted on the Registry in 1997, present "best management practices" which may be used to minimize the impacts. The guidelines state that significant changes to standard operating practices may be required to protect sensitive sites.

A comment from a forestry company on the Registry posting of the guidelines challenged the ministry's estimates of the potential risk of these impacts and objected to many of the recommended practices. In response, the ministry removed many of the recommended restrictions on forest operations.



Although these new guidelines could help to protect the physical environment of the forest, the forest industry is required only to consider them – not apply them – even though the Environmental Assessment Board had ruled that use of the guidelines was to be mandatory.

Recommendation 13

To ensure that the Forest Management Guidelines for the Protection of the Physical Environment are applied in the field, MNR should give them the same mandatory status as other forest guidelines, and should require foresters to report when the guidelines are not applied.

Recommendation 14

In light of the fact that MNR will be making major environmental policy decisions over the coming year, the ministry should ensure there is improved public involvement in decision-making. MNR should ensure that the following initiatives include public consultations involving: (a) Ontarians from all parts of the province; (b) public scrutiny of the best available maps, inventories and other information; and (c) adequate public comment periods on the Environmental Registry:

- Lands for Life Initial Options Reports and Preferred Options Reports.
- Regional Land Use Strategies. (Given the high public interest and complexity of the issues, the public should be allowed more than 30 days to comment on these.)
- Subregional Land Use Plans. (Where information gaps on natural heritage and tourism values have been identified, these should be addressed with updated inventories and maps).
- policies regarding extended tenure for the forest industry (especially since individual licences and wood supply agreements will not be posted on the Registry).
- policies, procedures and regulations regarding forestry compliance.
- policies on resource-based tourism.

Disposition and Sale of Crown Lands

"Disposition of Crown lands" encompasses many kinds of ministry decisions, including leases, land use, and issuing hunting and fishing licences. It also includes the sale of these lands.

The Crown lands over which the Ministry of Natural Resources (MNR) has stewardship make up more than 87 per cent of the province, and their value has been estimated at \$22 billion. In 1993, MNR changed its approach to the sale of Crown lands, saying the ministry wanted to accommodate opportunities for socio-economic development that are compatible with environmental and ecological integrity. MNR also wanted to increase non-tax revenues from the lands, and in 1995-1996, the ministry sold 151 surplus properties at market value for more than \$4 million.

This approach continues to be an important strategy in MNR's 1997 business plan. MNR regional district managers will be asked to identify Crown lands that are no longer needed and are not environmentally significant. To streamline the sale of these lands, MNR has proposed amendments to the *Public Lands Act*, posted on the Environmental Registry in February 1997, that would remove limits on the maximum size and minimum price of parcels of public land to be sold. Other changes to the *Public Lands Act* would delegate the power to sell public land (including lakes) from Cabinet to the minister. These amendments have not yet been finalized.

The potential for a sell-off of Crown lands is a very real one. All provincial ministries have been told to do more with less. In 1996-97, MNR experienced a budget cut of \$90 million, with a loss of more than 2,000 staff. While MNR's revenue target from the sale of Crown lands is currently modest — approximately \$5 million annually — the proposed legislative changes, if finalized, would permit a much more substantial sell-off of public lands in future years.

Province-wide consultation does not have to be carried out on the sale of these public lands and the *EBR* notice and comment periods do not apply. Public notice is given — and public consultation carried out — only if an MNR district manager feels a proposed project would have significant effects on the environment. The district manager also has the discretion to decide what kind of public consultation should be carried out. In the past these consultations have been local only, and not province-wide.

MNR has told the ECO that "MNR District Managers take seriously their obligations with respect to complying with this order — if a proposed disposition is environmentally significant, the public will be afforded the opportunity to participate and comment as provided in the *[EA] Act*."

Recommendation 15

MNR should ensure that all Ontarians are able to comment on decisions about the disposition of public lands, and should post on the Environmental Registry the ministry's annual province-wide plans and targets for disposition of Crown lands, and all proposals to sell specific parcels of Crown land.



Environmental Monitoring

Environmental monitoring is a key-stone to good environmental decision-making. Without knowing the current state of air, water, forests or wildlife, it is impossible to evaluate whether our management of these resources is effective. Both the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR) have formally recognized this by incorporating the following into their Statements of Environmental Values (SEVs):

MOE: The Ministry will adopt an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them. When making decisions, the Ministry will consider: the cumulative effects on the environment; the interdependence of air, land, water and living organisms...

In making decisions, the Ministry will use science that meets the demanding standards of the scientific community.

The Ministry will continue to monitor and assess changes in the environment, and it will review and report on its progress in implementing the Statement of the Environmental Values.

MNR: The Ministry will be a focal point for the establishment of information standards and the provision of data, information and knowledge about the geography of Ontario's landmass and its natural resources, and for reporting on the status of resources in Ontario.

It is particularly important to determine what more is needed to be learned about Ontario's natural resources and factors impinging on them to set direction for policy and program development, or to assess existing programs.

Although MOE's SEV supports environmental monitoring, the ministry confirmed in early 1997 that it was reversing its earlier plans to develop a State of the Environment Report. The ministry explained that due to cost-cutting, state of the environment reporting was discontinued as part of MOE's workplan. Decision to stop was administrative in nature.

The Environmental Bill of Rights states that the ECO's Annual Report shall include a summary of information about compliance with ministry SEVs. Prompted by MOE's decision not to develop a report, the ECO reviewed how MOE and MNR are carrying out the elements of their SEVs that relate to environmental monitoring and reporting.

How the ECO reviewed environmental monitoring programs:

The ECO selected for review a number of environmental monitoring programs relating to the management of air, water and natural resources. The sample included well-established programs, relatively new programs, and also some programs connected to current top priorities of the ministries. The programs were evaluated to gauge the quality of both monitoring and reporting, and also to assess how effectively the programs connected to any current stated targets of the ministries. ECO staff carried out phone and personal interviews with almost 30 staff in both ministries, as well as interviews with outside experts. The ECO also reviewed any available reports and documents. A brief summary of some of these programs is provided in the chart in Table 3 (pp. 50-51).

What the ECO found:

The monitoring programs we reviewed varied considerably in quality and scope. Many programs were undergoing major or minor restructuring to cope with reduced resources – some more successfully than others. In fact, 11 of the 14 programs ECO staff reviewed had experi-

enced cuts in budget or staffing within the last five years, and of the remaining three, funding for one program (Wildlife Inventories) has recently increased, another program appears to be holding steady, and a third program has not been active. A number of monitoring programs rely on volunteers from the public and strongly committed staff who understand the significance of their work and are using innovative approaches to cope with cutbacks.

This review found that, in general, MOE has better-established monitoring and reporting programs than MNR. For example, MOE has a well-established tradition of providing comprehensive regular reports to the public on province-wide trends in air quality, spills, and contaminants in sport fish. In contrast, MNR has not published annual statistics on natural resource indicators since 1991.

To its credit MNR had started to develop good geographic information systems (GIS), linked to its resource management program needs. However, as a result of cuts to its budget, these have been delayed and scaled back.

The ECO also found that:

1. Significant environmental information is not being collected or is not being analysed and reported.

The Ministry of Natural Resources...

- has not analysed figures for forest areas harvested since 1991.
- does few population surveys for small game species or non-game wildlife.
- has no population estimates for most wildlife species that are vulnerable, threatened or endangered.
- is not analysing data on big game mortality, and is not producing provincial or regional reports.
- has weak information on rare species in Northern Ontario.

The Ministry of the Environment...

- is not tracking total loadings of industrial discharges into waterways.
- does not monitor persistent toxics in effluents of sewage treatment plants.
- does not compile statistics on total loadings of raw sewage spills to waterways.

- has drastically reduced reporting on municipal/industrial discharges to water.
- has little data on the condition of the province's one million-plus septic systems.
- has no reliable emission inventory for inhalable particulates.

Neither MOE nor MNR has compiled baseline environmental information on the state of the Niagara Escarpment, although MNR says that "many studies on ANSIs located on the Niagara Escarpment have been completed – the summary report has not yet been released."

2. In a few cases, MOE had a stated target for an environmental parameter, but lacked monitoring data needed to assess progress toward the target.

PM10 emission inventory: MOE's 1997 business plan sets a target to reduce emissions of inhalable micro-particulates by 10 per cent by the year 2015. However, MOE acknowledges that it does not have adequate information on current emission levels. In this situation, target-setting is of limited value, although MOE says that it will compile "an improved PM10 emission inventory using the best information available... by March 31, 1998."

Waste water discharges: MOE's 1997 business plan says the ministry wants to measure the volume of toxic pollutants discharged to surface water, and sets targets:

- "reducing tonnes of current tier 1 toxic chemicals by 90% by the year 2000".
- "virtually eliminating industrial effluents acutely toxic to fish"

These targets would require a knowledge of the current total loadings of toxic chemicals, as well as total loadings of acutely toxic effluents to lakes and rivers. But MOE is not compiling these data.

3. A number of monitoring programs were not directly connected to any stated environmental targets.

Spills: The incidence of spills has been carefully monitored since 1985. Since 1992, MOE has explained in each annual spills report that the data are used to develop spill reduction initiatives, but the incidence of

spills has held steady, at around 5,000 a year. Each year, human error or equipment failure causes about 45 per cent of all spills, and MOE notes that spills can be prevented. But there is no stated provincial target or action plan that would focus resources on reducing the province-wide incidence of spills. Instead, the ministry is proposing to reduce reporting requirements.

Cottage lake water quality: The water quality of some cottage lakes is monitored for phosphorus and some other pollutants, but there is no goal, target or provincial action plan to prevent or control the eutrophication that can cause small lakes to be overtaken by algae. In fact, in 1997 MOE transferred the regulation of most septic systems (which can be major contributors to cottage lake pollution) to the Ministry of Municipal Affairs and Housing, which in turn handed the responsibility to municipalities. Similarly, since 1996, MNR no longer requires permits for the construction of most cottage docks and boathouses, or for the removal of aquatic vegetation. As well, MOE and MNR no longer review or



comment on local development proposals. It is not clear how MOE's monitoring of cottage lake water can be part of decision-making.

Hamilton air quality: Hamilton's air quality is monitored more intensively than in many other communities because the city has chronic air quality problems. It is estimated that there are at least 90 premature deaths

and 300 additional hospital admissions per year due to current air quality in Hamilton-Wentworth. While MOE has a province-wide goal of improving air quality, there are no stated goals or targets that would focus resources on improving Hamilton's air quality.

Windsor air quality: Monitoring results show that Windsor, like Hamilton, has chronic air quality problems. For example, in 1995, Windsor recorded the highest provincial one-hour concentration for nitrogen dioxide, the most frequent instances of elevated ozone, the highest annual average for total suspended particulates, one of the highest annual average concentrations for sulphur dioxide, and elevated levels of inhalable particulates. As in the case of Hamilton, there are no stated goals or targets that would focus resources on improving Windsor's air quality.

4. In some cases, gathered monitoring information isn't being used fully to bring about environmental improvement.

Databases on rare species: The Natural Heritage Information Centre databases were not used during the ongoing Lands for Life Phase I planning work, due to time constraints. These databases could provide locations for habitat of rare species. MNR says that "information on rare species has been placed on maps that have been provided to the Round Tables – this data is being used to refine boundary locations."

Forest regeneration: MNR receives extensive data from the forest industry, but has not been compiling it. For example, MNR has not compiled data for the actual area harvested since 1991. This is clearly important information needed for long-term forestry planning.

Windsor air quality: An intensive monitoring study of airborne toxics was carried out in Windsor from June 1991 to March 1993. This study involved close to 20 MOE scientists, who produced seven technical reports plus an executive summary and a plain language summary. The studies found that eight toxic air pollutants were of concern in Windsor's outdoor air, based on estimates of potential cancer risk. It was planned at the time that a multi-stakeholder Windsor Air Quality

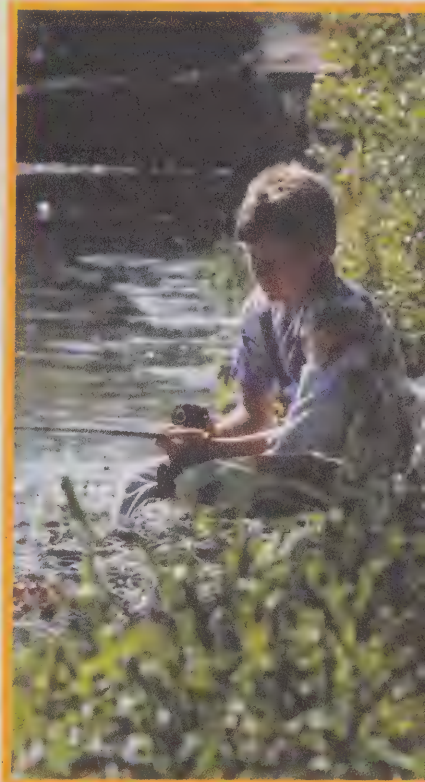
Committee would use the results of the study to develop recommendations for improvement. But because of MOE budget cuts, this committee has become inactive, the Windsor MOE office has lost half its staff, and there appears to be no local action plan or target to improve Windsor air quality.

Sport fish contaminants: This monitoring program was started in the mid-1970s and has built up a very large historical database. While the database is used effectively to alert anglers about elevated concentrations of contaminants in some catches of sport fish, there are closely related applications that are not getting much attention. In particular, the monitoring could help in researching the effects of persistent toxics on the sampled fish populations. There is a rapidly growing body of evidence that extremely low concentrations of persistent organochlorines can disrupt endocrine systems of animals, resulting in subtle or profound problems in embryo development and reproduction. Dr. Mike Gilbertson of the International Joint Commission has recently concluded that by 1940, the eggs of lake trout in Lake Ontario could no longer hatch because the concentrations of a specific form of dioxin were too high. MOE did have a researcher who evaluated the sampled fish for any visible health effects, but this position was lost in the most recent round of cutbacks.

Recommendation 16

Ministries should take stock of their environmental monitoring programs to ensure that they adequately cover their mandated responsibilities, and that they permit accurate, relevant reporting on the state of public resources such as air, water, wildlife and forests. To this end, ministries should ensure that:

- sound monitoring programs are in place that accurately assess progress toward their targets. Ministries should measure not only the level of ministry effort, but also the actual environmental results.
- environmental monitoring data, once gathered, also receive effective analysis, including geographical trends and trends over time.
- monitoring data and results of trend analysis are promptly reported to decision-makers and the public.
- new information provided by monitoring programs is applied in the work of the ministry, and is acted upon in the setting of targets and in other environmental decision-making.



Recommendation 17

Ministries should identify opportunities to strengthen their monitoring programs and improve their cost-effectiveness by:

- achieving multiple research goals within a given monitoring program.
- sharing their databases with other agencies having similar goals.
- adopting legislated reporting requirements in some key areas. Such requirements have been shown to be critical factors to the maintenance of a number of monitoring programs, such as MISA, Spills Reporting and the Forest Resource Inventory.



- adopting Geographic Information Systems (GISs) that permit consistency across government systems. GISs have the potential to become key tools for environmental monitoring programs. If they are well designed, they can allow not only geographic referencing of data, but also easy manipulation, analysis and sharing of large databases. Although they involve some investment, GISs can improve the overall cost-effectiveness of monitoring programs.

Table 3: Selected Environmental Monitoring Programs

Industrial waste water discharge monitoring

Relevance

Many industrial sources have approvals to discharge liquid wastes directly into lakes and rivers. Although these wastes are often treated to some degree, they still contain a large diversity of pollutants, including persistent toxic chemicals.

Related Ministry Targets

MOE's 1997 business plan says the ministry wants to measure the volume of toxic pollutants discharged to surface water, and sets these targets:

- "reducing tonnes of current tier 1 toxic chemicals by 90% by the year 2000"
- "virtually eliminating industrial effluents acutely toxic to fish"

These targets would require a knowledge of the current total loadings of toxic chemicals, as well as total loadings of acutely toxic effluents to lakes and rivers.

Quality of Monitoring

Much detailed data is collected, but very poor analysis.

Municipal Industrial Strategy for Abatement (MISA) regulations under the EPA require nine industrial sectors to monitor selected pollutants in their discharges to waterways. Details vary, but data must be submitted monthly to regional MOE offices, where they are checked for any exceedances of standards. Facilities report both flow rates and concentrations. Industries not caught under MISA may also have some monitoring/ reporting requirements in their certificates of approval.

MOE regional offices receive this data from about 300 industrial facilities across the province, and compile summary reports. They focus on any exceedances of standards, but do not calculate total loadings of pollutants, nor do they monitor year-to-year trends in the percentage of facilities in compliance. MOE has not been tracking total loadings of pollutants into waterways. MOE is working on developing emission inventories for the various industry sectors, but work so far has covered only a few pollutants emitted by the pulp and paper and the petroleum industries, such as AOx (total adsorbable organic halides), BOD (biochemical oxygen demand) and suspended solids. MOE has no target date for completing these inventories, and summary reports are not available.

Quality of Reporting

Very poor; has declined.

Data are submitted to the International Joint Commission under the Great Lakes Water Quality Agreement. Raw data are also shared with the public, but at a cost. An environmental group recently requested discharge records for all out-of-compliance facilities; MOE said this information would cost the group more than \$10,000.

For 1991 data, MOE published a detailed report on industrial direct discharges, including useful analysis on compliance trends. About 50% of facilities were in compliance in 1991.

For 1994 and 1995 data, MOE published a listing of each facility in non-compliance. The lists contained no summaries, trend analyses, or information on pollution loadings by any facility. It is unclear when or if reports for 1996 or 1997 data will be published.

Inhalable particulates emission inventory

Relevance

"Inhalable particulates" are microscopic airborne particulates that are small enough to enter lungs.

"Emission inventories" are produced by measuring (or estimating) emissions from every important type of source and then adding them up to discover the total provincial emissions for that pollutant.

Inhalable particulates (PM10) are connected to respiratory disease and premature death. PM10 is a chronic concern in cities like Windsor, Hamilton, Toronto and Sault Ste. Marie. An emission inventory is needed to identify major sources, to develop effective control strategies and to track progress.

Related Ministry Targets

MOE's 1997 business plan has set a target: Emissions of inhalable micro-particulates reduced 10% by year 2015.

To evaluate progress toward this target, MOE would need an accurate emission inventory for a baseline year.

MOE has also committed to developing a comprehensive reduction strategy for PM10 by the end of 1998.

Quality of Monitoring

Poor.

MOE acknowledges that emission inventory information for particulates is very uncertain.

There is no mandatory monitoring or reporting by major sources.

Emission estimates are obtained from voluntary surveys of sources, based on any information available. Contributions from road dust, construction, secondary pollutants, etc., are also poorly understood.

MOE has committed to producing an emission inventory for PM10, but has allocated only two staff and no research budget. Methodology and timelines are also unclear. MOE says that an improved PM10 emission inventory using 1995 statistical information will be completed by March 1998.

Quality of Reporting

Poor: MOE is reporting outdated, weak data.

MOE included a chart of 1990 emission estimates for PM10 in its December 1997 overview of air quality, but did not mention known weaknesses of data. According to an expert group assembled by MOE, improvements in estimates "are crucial" for combustion and industrial sources, while emissions from road dust, construction, farming, etc., "are not well known."

Forest Resources Inventory (FRI)

Relevance

Ontario's Crown forests support a very large forest industry. To manage and regulate forestry activities, MNR needs accurate, current information about the state of forests province-wide.

The FRI began in 1946; for forest industry needs. The forest industry is legally required to use and update the FRI to produce forest management plans.

In the absence of alternatives, MNR also uses the FRI to identify potential natural heritage lands and to estimate wildlife habitat potential, even though the database design and data collection methods were not meant to capture such information.

Table 3: Selected Environmental Monitoring Programs

Related Ministry Targets

For many years, MNR had ambitious but unrealistic targets for province-wide wood production that were set according to demand, not calculated from the ability of the land to produce that wood supply. MNR has begun a process to develop new wood targets (through FRAP, see page 42).

MNR needs reliable FRI data as base information for the computer modelling system to create the wood supply estimates, and later to measure its progress toward achieving the desired forest condition.

MNR's 1997/98 Business Plan says the ministry wants core geographic information to be "available, accessible and affordable," and that the ministry wants to measure the "percentage of the province with current resource inventory and base maps." No target percentage is mentioned, however.

Quality of Monitoring

Database is being updated and being made more electronically accessible. It is not designed to measure values other than timber supply.

Inventory work begins by acquiring aerial photos, followed up by sampling forest conditions by ground crews. Then staff interpret forest cover and classify the area as either productive forest, non-productive forest, non-forested land, or water. More detailed attributes such as species, height and age of trees are also noted, and are critical for estimating current and future wood supplies. Ground-level vegetation, noncommercial forestry information and planning information are not monitored, but a new system which will integrate the FRI with other natural resource information in a Geographic Information System is just beginning.

MNR's FRI program has been criticized by many independent reviewers, including the Provincial Auditor in 1986 and 1994, a specially appointed auditor in 1994, and the EA Board in 1994.

In the past, inventories were updated every 20 years, by focussing on about 5% of the forest annually on a rotating basis across the province. Recently, in response to criticism, MNR has accelerated these updates, especially for intensive forestry regions, and is even aiming for "continuous updates" by having industry update the FRI with all new wildfire, harvest and free-to-grow information. Province-wide, the average age of the inventory is between 5 and 10 years old. But some regions, particularly in southern Ontario and the far north, have inventories older than 20 years. All locations inventoried since 1987 are in a digital database, but much of the Northwest Region is not yet digitized.

MNR funding for FRI has declined since 1995/96. It is now being paid for by industry, with the share the ministry used to pay now coming from industry fees paid into the Forestry Futures Fund, a special purpose account.

Quality of Reporting

Sporadic, with little trend analysis.

In 1997 MNR committed to much better analysis and reporting of FRI data.

MNR has produced periodic summaries of the FRI: for the years 1963, 1986, 1993 and 1996. These reports are mainly tables of data, with some descriptive text and useful maps.

In its 1997 Forest Resources Assessment Policy (FRAP), MNR committed to more thorough assessments of the forest condition, using the FRI and other information to describe trends in the forest condition from one report to the next. The first assessment report, *An Assessment of Ontario's Forest Resources*, was also published in 1997. (See further discussion, p. 42.)

Raw FRI data is available for a fee through MNR's Internet and Intranet sites, as well as at MNR's Information Centres. Forestry clients are licensed to access the data electronically.

Wildlife Inventory Database

Relevance

MNR needs to have accurate information on wildlife populations and habitats, and the stresses on them.

Related Ministry Targets

Fish and wildlife were described as one of MNR's top priorities in its 1997/98 business plan. MNR also said it would establish new targets for big game populations and make significant progress in achieving them by 2002.

Quality of Monitoring

Poor for many species; but improving.

Most attention is given to game species such as moose, deer and bear.

In 1995/96 MNR identified serious weaknesses and gaps in wildlife information. For example, problems were identified with bear population data, hunting data, and information systems.

There is little information collected on small game species or non-game wildlife.

Recent improvements:

1. The Environmental Assessment Board in 1994 required MNR to carry out a provincial wildlife population monitoring program to assess the effects of timber management on wildlife. MNR established the Wildlife Assessment Program in 1997 to monitor trends in populations of indicator species, including some non-game species for which data is currently lacking. The program is modest, with a budget of \$500,000 annually from the Forest Management Program and six full-time staff in three regions.
2. MNR established dedicated funds for fish and wildlife inventory work during 1996/97, creating a special purpose account under the *Game and Fish Act* for fees received from hunting and fishing licences. About \$1.2 million is now budgeted annually on inventories, primarily of game species. This appears to be slightly more than was spent in the past.
3. Available wildlife data is being put into a new electronic database, which should provide improved access to data and allow statistics to be aggregated provincially.

Quality of Reporting

Poor.

For example, MNR manages a bear hunt which harvests about 7,000 bears annually. Although MNR has put out news releases estimating the Ontario bear population at 75,000 to 100,000 individuals, the ministry has not published any reports on bear population numbers.

The Big Game Mortality System has the capacity to produce provincial and regional reports, but they haven't been produced for several years because the data were not entered by field staff.

MNR intends to report the results of the new Wildlife Assessment Program in future in the five-year State of the Forest Reports.



Pollution Prevention through Voluntary Agreements

In recent years, Ontario has joined a global trend toward relying on alternatives to the regulatory approach to environmental protection. These include voluntary approaches – industry codes, self-management schemes, government-run pledge programs, and voluntary agreements. In its 1997 business plan, the Ministry of the Environment (MOE) stated that "over the next three years there will be a new emphasis on encouraging and helping communities and companies to adopt voluntarily good environmental practices beyond regulatory requirements."

Some of the potential benefits of voluntary agreements come from the greater efficiency and flexibility they could provide. The potential drawbacks to voluntary agreements include their lack of clear and measurable goals, the fact that the agreements are not enforceable, and the decrease in government accountability, since they are often negotiated "behind closed doors."

In fact, reviews carried out by the ECO during 1997 show that voluntary agreements have usually been negotiated without direct public involvement. Industry representatives generally feel negotiations should include only industry and government, according to a survey conducted for Environment Canada in 1995. But the survey also indicated that environmental non-governmental organizations (ENGOS) were reluctant to accept agreements negotiated without public or ENGO participation. Our review also shows that many European jurisdictions have created legal frameworks for voluntary agreements, including legislated requirements which apply if the voluntary efforts are not producing the expected environmental improvements (often called backdrop regulations). Unlike European environmental agencies, Ontario's MOE has created no legal framework or policies for voluntary agree-

ments, although a recent report prepared for the ministry recommended that MOE develop these policies and then enact legislation to support them.

Since 1992, according to a recent MOE publication, the ministry has signed five memoranda of understanding (MOUs) with Ontario industrial sectors and one with a regional municipality. As well, MOE has entered into several "partnership agreements." (Often unwritten, these are less formal than MOUs.) Since most of this activity took place before the *Environmental Bill of Rights* was passed, public comment could not be solicited through the Environmental Registry. The first pollution prevention MOU signed by MOE (as well as by Environment Canada) was with the Canadian Motor Vehicle Manufacturers' Association. The agreement was patterned closely on a similar American project, and subsequent agreements carefully followed the structure of this first MOU. Currently, however, there are ongoing discussions to renew several MOUs, and it is hoped that the public will soon have an opportunity to comment on them through Registry postings. (For further discussion, see Table 4.) One proposed voluntary agreement was posted on the Registry during 1997 – the agreement with Dofasco, discussed below.

ECO Commentary

The public's role in environmental policy-making has increased dramatically over the past 30 years. The passage of the *Environmental Bill of Rights* in 1993 affirmed that Ontario residents have a right to comment on policies that may affect the environment. If ministries continue to make more environmental policy decisions during the negotiation of voluntary agreements, it is important to ensure that the negotiation processes provide opportuni-

Voluntary Agreements: The Dofasco Environmental Management Agreement

Dofasco is one of Hamilton's two major steel producers. Recently, Dofasco, the Ministry of the Environment (MOE), and Environment Canada announced they had concluded a draft agreement. The aim of the agreement is to reduce pollution from Dofasco's Hamilton facilities and to reduce the use of toxic materials; Dofasco will implement the agreement through its existing environmental management system.

The final agreement, posted on the Registry in early January 1998, committed Dofasco to using "all reasonable efforts" to meet several targets for reducing air and water emissions and solid waste production. For example, by year 2000 Dofasco will attempt to reduce by 80 per cent its 1993 levels of benzene emissions from all by-product plants. As well, by the end of 1998 Dofasco will attempt to exceed its commitments under the federal Accelerated Reduction/Elimination of Toxics (ARET) program by reducing total ARET substance emissions by 50 per cent from the base year.

Dofasco's Regulatory Obligations may be Altered

The agreement also includes commitments by MOE and Environment Canada. MOE will use "all reasonable efforts" to exempt Dofasco from one of the requirements of a provincial waste management regulation, under which all carriers of waste on public roads must create a manifest for each truckload of waste at all points of transfer. Since copies of the manifest must be quickly submitted to the ministry and other copies retained by the carrier and the waste generator, a large amount of paperwork is created. Under the agreement, wastes that are transferred between Dofasco's Hamilton facilities would be exempted from the requirement, although Dofasco would continue to keep internal records. MOE claims that "regulatory obligations on Dofasco will not be altered."

MOE will also attempt to streamline the process of amending Dofasco's existing certificates of approval. Existing certificates for single sources (like a smokestack) might be consolidated into larger permits for a single plant or process, allowing for faster changes in processes or production levels.

Differences from Past Voluntary Agreements

Past voluntary agreements in Ontario have been primarily signed with industry associations, not with individual companies, and their terms have been quite general, making it difficult to assess their effectiveness. The Dofasco agreement, in contrast, includes specific terms and targets, against which the effectiveness of the agreement can be judged. Like earlier agreements, however, the provisions of the agreement with Dofasco cannot be enforced by MOE or by Environment Canada. MOE claims, however, that any party to the agreement "may seek damages, etc.," through the court system.

The agreement was posted on the Environmental Registry, with a 30-day comment period, and a public meeting was held when the agreement was released. One member of the public was appointed to the group which negotiated the agreement.

ties for meaningful public involvement. Consultation, including through the Environmental Registry, will be an important step in gathering public input and increasing public confidence in their use. As well, the credibility and effectiveness of voluntary approaches would be enhanced if the Ontario ministries contemplating their use as a tool

for improving the environment would adopt the successful practices of other jurisdictions. These would include adopting a clear legal framework and enforcement alternatives such as the creation of backdrop regulations.

Recommendation 18

The ministers developing programs to promote environmentally significant voluntary agreements should establish a general legal and policy framework for their use, and broadly consult the public on this.

Recommendation 19

Ministers should ensure that voluntary agreements are developed with backdrop regulations that contain effective monitoring and reporting mechanisms and clear and measurable goals that allow for verification of results by the public.

Recommendation 20

The ministers entering into voluntary agreements should establish a clear role for public consultation in the design and implementation of individual voluntary agreements.

Table 4: Selected Ontario Voluntary Agreements

Automotive Parts Manufacturing Pollution Prevention Project

MEMORANDUM OF UNDERSTANDING (MOU), 1993.

MOE, Environment Canada, Automotive Parts Manufacturers' Association (AMPA). Eight participating companies.

The agreement expired in 1996, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the winter of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program

The MOU established a Task Force with industry and government representatives. General objectives include training opportunities for sharing information on pollution prevention and developing courses and workshops on pollution prevention planning. As well, the companies undertook to identify and prioritize pollution prevention opportunities and implement them to achieve verifiable reductions in the use or discharge of toxics.

The Task Force is responsible for monitoring progress and ensuring that results are verifiable.

Selected results to date

1994 - 1997:

1. The Task Force identified four priority processes for the participants' pollution prevention efforts.
2. AMPA published the results of a survey which established benchmarks for technologies in cleaning and degreasing and in the use of metal-working fluids. A survey on surface-coating practices was initiated.
3. Several workshops on environmental management systems and pollution prevention were conducted.

Reductions:

Two progress reports (1994 and 1996) document 22 case studies achieving annual emissions reductions of 660 tonnes of toxic substances and other wastes discharged to air and water.

Canadian Automotive Manufacturing Pollution Prevention Project

MOU, 1992; RENEWED 1994.

MOE, Environment Canada, the Canadian Motor Vehicle Manufacturers' Association and the Canadian subsidiaries of the "big three" auto makers (Ford, GM, Chrysler). Although not a signatory, custom transport truck maker Navistar International has participated by submitting pollution prevention case studies.

The agreement has expired, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the winter of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program

MOU established a Task Force responsible for meeting the objectives set in the Terms of Reference. The implementation plan, prepared in late 1992, focused on the development of pollution prevention plans at both the company and plant level. Each company developed a candidate list of toxins and other contaminants for voluntary reduction/elimination, based on a larger candidate list agreed to in the MOU and a latter addendum which renewed the MOU.

Results reported on a case study basis. Technology transfer to other industry members and to suppliers is another key aim of the projects undertaken by participants.

Selected results to date

1993 - 1996:

1. Industry held several workshops with suppliers to encourage project support.
2. Second Progress Report issued with 15 case studies documenting reductions of 2,200 tonnes annually in discharges of contaminants of concern; MOU renewed, target list of toxics expanded.
3. Third Progress Report indicated annual reductions of 126,937 tonnes of toxic substances and waste, through 24 pollution prevention projects.
4. Fourth Progress Report indicated annual reductions of 21,385 tonnes of toxic substances, through 26 pollution prevention projects

Reductions:

- To 1995, 65 pollution prevention projects had been reported on by the parties, with a total annual reduction of 150,522 tonnes.

Joint Canadian Chemical Producers' Association and the Ontario Ministry of the Environment Pollution Prevention & Reduction Program

MOU, 1994.

Canadian Chemical Producers' Association, MOE, and Environment Canada; six participating companies (one was not an original signatory). Participants include Du Pont Canada, Imperial Oil (Chemicals Division), Dow Chemical Canada, and Nova Chemicals.

Expiry date was February 1996. Not yet known whether the MOU was renewed.

Design features of the program

The MOU was intended to lead to the development of a four-stage voluntary pollution prevention program:

1. Preparation of a planning framework.
2. Sharing of pollution prevention knowledge.
3. Production of site-specific pollution prevention plans.
4. Implementation of the site plans.

Selected results to date

Reductions:

- 11 facilities have 15 toxic substance and waste reduction projects underway.
- Through 1995, participating companies reported the following reductions in annual discharges:
Solid wastes: 9,500 tonnes/yr.
Hydrocarbons: 2,372.5 tonnes/yr.
Organic liquids: 58.2 tonnes/yr.
Wastewater treatment sludge: 2.7 tonnes/yr
CFCs: 1.7 tonnes/yr.

Hamilton District Autobody Repair Association (HARA) Partnership

PARTNERSHIP AGREEMENT, 1995.

HARA, MOE. This agreement was signed after joint MOE-HARA initiatives were underway, and the agreement commits the parties only to distribute information on environmentally sound practices in the autobody repair industry.

Expiry date is not known (there may not have been an expiry date, but a number of projects were to be completed before the end of the agreement).

Design features of the program

The Partnership Agreement relates to educational initiatives.

HARA has proposed a mix of self-regulatory and external control mechanisms: that the Canadian Council of Ministers of the Environment's (CCME) draft National Standards and Guidelines for the Reduction of Volatile Organic Compounds from Canadian Commercial/Industrial Surface Coating Operations be adopted and applied by an industry-run organization, the Autobody Repair Registration Inspection and Verification (ARRIV) Board. ARRIV would manage the implementation and enforcement of the proposed CCME standards by issuing a certificate, similar to a certificate of approval, and would then inspect, monitor and enforce the proposed standards. Without a certificate, facilities would not receive payment from insurers.

Selected results to date

1994 - 1995

- HARA conducted outreach activities for the over 300 auto repair businesses in the Golden Horseshoe. HARA won an MOE award (the P4 Leadership Award) for its programs in 1994.
- Under the Partnership Agreement, HARA developed a workbook and video on environmentally sound practices for autobody repair shops. A draft of the workbook was produced. HARA is involved in an organization which has conducted several workshops in southern and south-western Ontario which provide information on: CCME VOC emission standards, efficient paint application techniques, avoiding problems through good environmental practices and industry self-regulation and accreditation.

Metal Finishing Industry Pollution Prevention Project

MOU, 1993; RENEWED IN 1995.

Environment Canada, MOE, Canadian Association of Metal Finishers, American Electro-platers and Surface Finishers Society, Metal Finishers Suppliers Association. Seventeen participating companies, not all signed the MOU.

The agreement has expired, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the spring of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program

At this point, the project has involved assistance in pollution prevention planning, the production of educational materials, and the reporting of case studies.

Selected results to date

Reductions:

Three progress reports were issued prior to October 1996 (First Progress Report, June 1994; Second Progress Report, April 1995; Third Progress Report, September 1996). The Fourth Progress Report was issued in September 1997 and identifies nine new case studies and 1,664 tonnes of waste reduced or eliminated.

Printing and Graphics Sector Pollution Prevention Project

MOU, 1994.

MOE, Environment Canada, Ontario Printing and Imaging Association, Printing Equipment Supply Dealers Association. Fifteen participating companies, including some of the largest in this industry (Kodak Canada, Quebecor Printing Canada, Kwik Copy Printing, Davis & Henderson, Du Pont Canada).

The agreement has expired, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the spring of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program

The agreement is described in an MOE publication as "a joint pollution prevention planning agreement that [targets] toxic substances and wastes."

The approaches are similar to those in other MOU's with a planning focus, involving the distribution of general information related to pollution prevention and the development of industry-specific guides to best practices. Reduction actions are, of course, at the discretion of the companies involved.

Selected results to date

1994 - 1996:

Prior to the signing of the MOU, a clean technology committee was formed to inventory the chemicals used and wastes generated in the industry.

Another committee developed materials about pollution prevention for the sector.

Training workshops explaining pollution prevention and clean technologies were held. A progress report was released in 1996.

Reductions:

The First Progress Report was issued in April 1996. There were 23 facilities undertaking pollution prevention projects, and two had already reported some results - a reduction of 52 tonnes in the use of isopropyl alcohol and other solvents.

The Second Progress Report was issued in October 1997 and identifies seven new case studies and 360 tonnes of waste reduced or eliminated.



The Introduction of Alternate Service Delivery: Two Examples

The year 1997 saw the introduction of alternate service delivery systems (ASDs) by several provincial ministries. Two of these programs – MNR's Aggregate Licensee Inspections and MOE's Remedial Action Plans (Support for Public Advisory Committees) – were reviewed by ECO staff during the year. The following is a review of the way the changes to each delivery system were planned and then implemented.

Aggregate Licensee Inspections, MNR

Background: Under the *Aggregate Resources Act* (ARA), Ministry of Natural Resources (MNR) inspectors were required to inspect each licensed aggregate site annually. But because of fiscal constraints and reduced staffing, between 1991 and 1996 inspectors were not able to inspect all licensed sites each year. In April 1995, MNR and the Aggregate Producers Association of Ontario (APAO) began discussing alternatives to the inspection process, and in 1997 a new compliance reporting process was established.

Aggregate licensees will now file their own reports annually on how they complied with the ARA, its regulations, the site plan, and licence conditions. MNR says it will then review the reports and select priority sites for partial or full inspections. The first compliance assessment reports from licensees were due the end of November 1997, and licensees had until February 28, 1998, to correct any deficiencies identified in the reports. MNR inspections will start in spring 1998.

Are the Changes Clear? MNR was clear in communicating to the aggregates industry the changes to aggregate licensee inspections and how the new system would be different.

Planning for Change

Before the Decision was Made: Beginning in April 1995, MNR and APAO developed various alternatives and models for a new aggregate inspection program. The potential benefits and risks of all the alternatives were assessed, and the ministry evaluated the costs, benefits and risks of each alternative – including how to mitigate any risks – before the decision was made to adopt a new compliance reporting system. The new process was then tested in pilot projects with selected companies during 1995, and in 1996 all APAO members voluntarily used the new system. The 1995 trial run was then evaluated by MNR and found to be generally favourable.

Public Consultation: Consultation on the changes to the inspections program was initially poorly carried out. While there was considerable consultation with the 1,000 producers who belonged to APAO, there was only limited consultation with 1,700 non-APAO licensees and permit holders and with the public. Moreover, the proposed changes to the ARA were not posted on the Environmental Registry, and licensees and permit holders received notice of the proposed changes only when the ARA amendments went to First Reading in the Legislature. Later, however, the ministry's public consultation process improved. Both the proposed new regulation and the new standards that came out of the amended act were posted on the Registry for public comment.

Implementing the New Service Delivery System

Preparation and Training: Advance notice of the new system was given well before the changes were implemented – two years before in the case of APAO members, and one year for non-APAO producers. There was also extensive prior preparation and training for APAO members before implementation of the new system, although non-

APAO producers did not receive training until the new program was being put in place in July and August 1997. More than 1,800 people attended the training sessions held at that time.

Ministry Staff and Resources: MNR developed its new operating procedures, processes and practices before implementing the new program and will continue updating and reviewing its processes.

Preparation and training of MNR staff took place over two and a half years before the new system was implemented. Workplans have now been assigned, and the ministry intends to inspect all aggregate sites over the next two years. MNR says that the non-inspection work of inspectors will be reduced so that 90 per cent of their time will be spent on inspections.

Reaching Stated Objectives: The number of aggregate inspectors at MNR has declined from 66 in 1994 to 20 in 1996, during a period when the ministry was already having problems inspecting each site. MNR can probably meet its inspection goals (20 per cent of all sites in the first year, 50 per cent in subsequent years), but it will have difficulty reaching these goals if the ministry loses any more inspectors or if inspectors have to fill other roles as well.

All in all, the new alternate delivery system has been well planned so far. However, since the compliance reporting process is new – not yet having completed its first year – it is premature to comment on whether MNR's well-laid plans were successfully implemented.

Remedial Action Plans, MOE

Background: In 1985, the International Joint Commission, an organization of Canadian and U.S. federal governments, established Remedial Action Plans (RAPs) to remediate 43 "Areas of Concern" (AOC) in the Great Lakes. The RAPs were also supported by provincial and state governments. Each AOC is an area with toxic substance problems. Seventeen AOCs are in Ontario and five were shared between Ontario and the U.S. One AOC in Ontario – Collingwood Harbour – has been remediated.

Each AOC has a Public Advisory Committee (PAC) made up of government and community members to oversee the remediation of the local AOC. Each AOC had a RAP Coordinator funded by the province. In January 1997, the Ministry of the Environment (MOE) stopped almost all funding to the PACs and eliminated most of the RAP Coordinator positions. The ministry says that it will continue to provide program support for the RAPs, but that funding will have to come from "alternative funding" – private sector and other donors.

Are the Changes Clear? It is not obvious what has been changed and reduced in this MOE program, and what hasn't been. There had been prior cutbacks to activities that supported the RAPs – for instance, labs – but these were not announced as part of cutbacks to RAPs. On the other hand, the ministry now says that some cleanup activities in the Great Lakes that were not ostensibly part of the RAPs will continue. And, according to MOE, some indirect funding to PACs is going to the Lake Superior Program Office and to the Severn Sound Environmental Association under new funding arrangements. In addition, some RAPs were supported more by the federal government than by Ontario, and provincial cutbacks did not affect these programs as much, according to the ministry.

Planning for Change

Before the Decision was Made: There was no consideration by MOE of any alternatives to the course the ministry took, including no overall strategy for moving RAPs to alternative funding and support. While MOE staff developed some proposals after the cutbacks were made, these were still not approved as of December 31, 1997. As well, the ministry did not consider how cutting non-RAPs services (e.g., the labs) would affect the RAPs. Although the ECO asked for evidence of any cost/benefit analysis of the effects of the cutbacks, none was provided. The ministry did carry out an analysis of whether RAP Coordinators should be retained: ministry staff say that some RAPs had progressed far enough to be able to continue without RAP Coordinators while other RAPs still needed them. However, all RAP Coordinators were eliminated.

There were no pilot projects or trial runs with new service providers or with industry. Although the ministry, and some PACS, were able to develop new local funding and support mechanisms (e.g., the Severn Sound Agreement), these were developed after the cutbacks took place. And these were all local initiatives and not part of a ministry overall plan. Piecemeal initiatives to help individual RAPs were also made *after* cutbacks. Although MOE staff have put forward some good ideas on supporting RAPs overall, as of the end of 1997, these ideas were not approved by MOE.

Public Consultation: The cutbacks in funding and the elimination of provincially funded RAP Coordinators were announced on January 14, 1997 – without any prior consultation with PAC members or with the public, and without posting the changes on the Environmental Registry. The ministry has been telling PAC members since 1994 that cutbacks would occur, but no information was given on the nature, extent and timing of cutbacks. The cutbacks to services that support the RAPs, such as the labs, were also made without consulting PAC members or the public. Because the MOE labs were closed, two RAPs had to stop testing water.

Implementing the New Service Delivery System

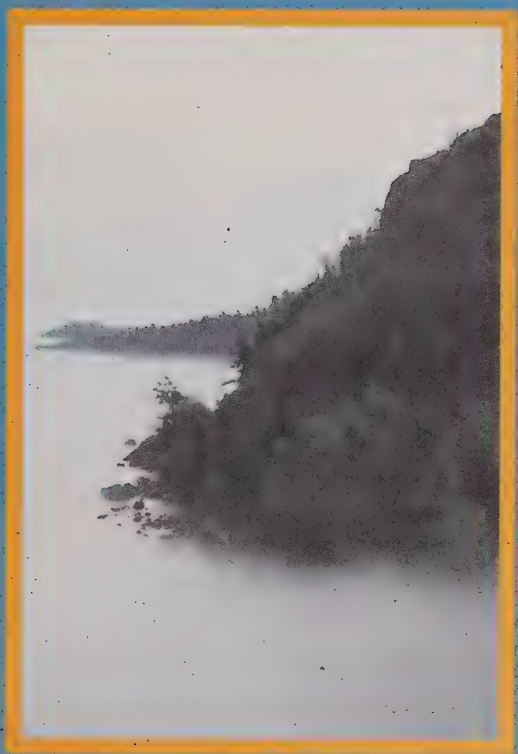
Preparation and Training: Only limited preparation and training was undertaken by MOE before the changes were made. The ministry prepared a toolkit/ binder with the aim of helping the PACs be more independent. It gives advice, for instance, on how to establish a non-profit organization, recruit members, and raise funds through membership fees, bingo games, or corporate sponsorships.

Ministry Staff and Resources: There was no preparation and training of MOE staff prior to instituting these changes. Instead, there were sudden staff layoffs.

Reaching Stated Objectives: It is uncertain whether RAP objectives will be met by 2000; it may depend on the local area. There are some good initiatives – for instance, the Severn Sound Agreement – but the RAPs program still lacks an approved overall plan.

Recommendation 21

Ministers should ensure that alternate service delivery systems that replace or complement ministry laws, regulations, programs and policies are developed and implemented in accordance with the Registry posting and SEV consideration requirements of the EBR, and with the principles of good management. Also, ministry staff should ensure that, in addition to public notice and comment on the Registry, adequate and meaningful consultation with all interested persons, including industry officials, public interest groups and the public, is undertaken in the development of ASD systems.



Reviews and Investigations

What is a review?

Under the *EBR*, Ontario residents can ask a minister to review existing environmental policies, acts, regulations and instruments, or the need for a new environmental policy, act or regulation. These are called reviews.

What is an investigation?

Ontario residents can also ask the minister to investigate if they think someone is violating, or about to violate, an environmental act, regulation, or the terms of approval of an instrument. These are called investigations.

My staff assist people who want to apply for reviews and investigations, and the completed applications are forwarded to the ministries involved. Each year I review and report on how these applications were handled by the ministries.

Summary of 1997 Applications

During 1997, two ministries, the Ministry of Natural Resources (MNR) and the Ministry of the Environment (MOE), were required to consider applications for review and investigation from the public. Twenty-five applications were submitted during the year.

Many applications dealt with matters that received wide public attention. For example, a number of applications related to discharges of contaminants by Ontario Hydro power plants. Other applications concerned the regulation of recycling plants, including Hamilton's Plastimet site.

Applications covered a diversity of topics, from potential damage to a provincially significant wetland in Whitby by a proposed housing development, to an MNR decision to withdraw from enforcement of the federal *Fisheries Act* provisions that safeguard fish habitat. Other issues included health concerns related to chlorination of drinking water in Milton, emissions caused by burning used oil in small space heaters, and the need for a watershed management plan to address drainage problems. As in previous years, the operation of landfill sites was the subject of applications.

The *Environmental Bill of Rights* provides an opportunity for residents to address issues that have eluded other

approaches. Well-researched applications can lead to positive and even unexpected results. In one example, applicants alleged that their neighbours straightened a river bank by adding outside fill to their property, causing increased silting, erosion and flooding on the applicants' property, and the destruction of fish habitat. MNR concluded that the alteration was in violation of the federal *Fisheries Act* and initiated a prosecution under the act. MNR withdrew the charges after the accused agreed to rehabilitate the stream back to its original condition.

During 1997, the ECO assessed the handling by the ministries of 13 applications for review and 16 applications for investigation, including some that had been submitted in previous years.

Ministry responses when applications are denied

In most cases, ministry responses to applicants were thorough, providing a clear rationale for denying the application. In a small number of cases, however, the response of the ministry was not helpful in explaining why the application was denied or what other recourse might be available for addressing the applicants' concerns.

Ministries are encouraged to provide detailed, accurate reasons to applicants for denying an application.

Impartial reviews and investigations

Decisions on some applications were taken by the same department originally involved in the issue. To obtain a fresh and impartial perspective on the matter, ministries are encouraged to assign the decision whether to undertake a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue. For example, MOE did this when it assigned an application for investigation to its separate Investigation and Enforcement Branch.

Recommendation 22

To obtain a fresh and impartial perspective, ministries are encouraged to assign the decision for undertaking a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue of concern.

Reasonable time frame for resolution of applications

Once the ministry has indicated that it will undertake a review, there is an expectation that the ministry will complete it within a reasonable period of time. Problems arise when the ministry links the completion of a review or investigation to an external event over which it has no control. For example, a three-year-old application submitted by almost 500 applicants seeking the review of a drinking water standard for tritium is yet unresolved due to a related federal initiative. MOE is encouraged to establish an interim standard pending the outcome of the federal review.

Recommendation 23

Since the review of a drinking water standard for tritium has taken longer than three years, MOE should establish an interim standard pending the outcome of the federal review.

Applications Forwarded to Ministries

	Reviews	Investigations
Undertaken and Completed	1	3
Undertaken but Not Yet Completed	0	6
Not Undertaken	9	5
Undecided	1	0
TOTAL	11	14

Areas of Natural and Scientific Interest (ANSI)

The ANSI program — “areas of natural and scientific interest” — was announced in 1983 by the Minister of Natural Resources and was aimed at protecting natural heritage values in areas not covered by the provincial park program. The public’s concern about MNR’s criteria for identifying and classifying ANSIs and the kind of protection conferred by an ANSI designation was evident in two *EBR* applications during 1997, and in public comments on ANSI management plans posted on the Environmental Registry. People wondered, for instance, whether resource use and extraction are permitted in ANSIs.

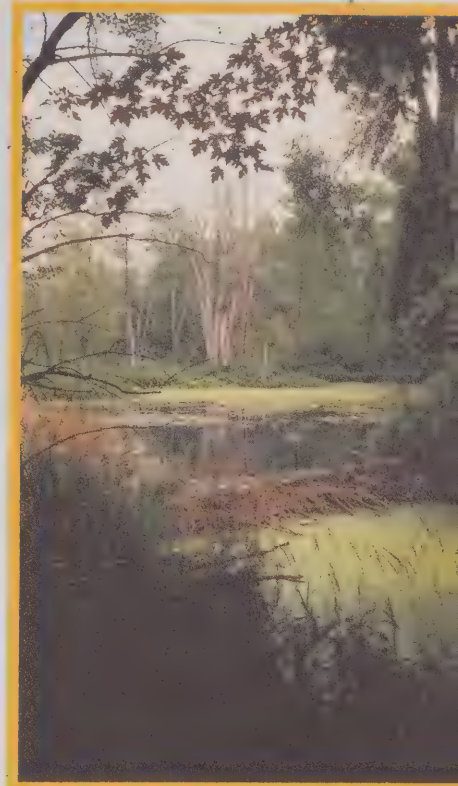
The minister claims that members of the public are confused about ANSIs, and in February 1997, said that MNR will no longer use the term. The ministry has told the ECO that “the designation is not meant to confirm some degree of protection.” In Ontario’s huge central forested area, it appears that existing ANSIs not regulated as parks or conservation reserves through the Lands for Life planning process may become available for resource extraction.

Dropping the ANSI program could have a negative effect on land conservation in southern Ontario. There, most ANSIs are on private land and are referred to in a number of ministry policies affecting private land. For example, owners with provincially significant ANSIs on their property are encouraged to protect their natural heritage values, and if they do so, do not have to pay property taxes on the ANSI lands. In addition, the Provincial Policy Statement under the *Planning Act* states that development may be permitted in a provincially significant ANSI only if it does not negatively impact on its natural features or ecological functions.

Evidence reviewed by the ECO shows that ANSIs play a valuable role in the protection of Ontario’s natural heritage features. Thus far, MNR has not posted any proposed changes to the ANSI program on the Environmental Registry.

Recommendation 24

MNR should clarify any changes it plans to make to the ANSI program and post the proposal on the Environmental Registry for comment. MNR should clarify the degree of protection afforded to the natural heritage values of lands that have been designated as ANSIs, the criteria for identifying and evaluating ANSIs, and the ministry’s procedures for confirming or changing an ANSI designation.



Making Ontario's Blue Box System Better

During 1996 and 1997, my staff and I reviewed MOE decisions on refillable soft drink regulations and the Blue Box system in order to understand more fully the concerns raised by the public in their applications for investigation and review of these issues.

In January 1995, a Toronto-based environmental group applied for an investigation, alleging that two companies had contravened refillable soft drink regulations. Then in March 1995, two Ontario residents applied for a review of these same regulations. In response to the application for investigation, the Ministry of the Environment found that the two companies had contravened the regulations. MOE did not lay charges, however, saying it would be inappropriate to prosecute because the ministry and industry were working toward a solution. MOE also said it was waiting for two industry studies of the issue, originally promised for 1993. To date, these reports have not been completed.

In response to the application for review, MOE agreed to include the soft drink regulations in "Responsive Environmental Protection," the ministry's full-scale review of 80 environmental regulations announced in July 1996.

In my 1994-95 Annual Report, I recommended that MOE announce the changes it intended to make to Ontario's soft drink regulations, and in the absence of such change, that the Minister of the Environment enforce the regulations as they exist. To date, neither has been done.

The results of our ongoing reviews led me to recommend in my 1996 Annual Report that MOE and the Ministry of Consumer and Commercial Relations research the costs and the environmental, scientific, economic and social benefits of adopting new refillable container technologies in Ontario and implementing a deposit-refund system for liquor containers. In fact, many Canadian provinces, such as Alberta,

British Columbia and Quebec, already have regulations in place requiring deposit-refund systems.

To date, the ministries have not announced any new action, and in November 1997, with respect to my recommendation, the Minister of the Environment said that he intends to delay any further action on beverage containers until after April 1998.

In December 1997, I received another application for review on this issue, this time from a large municipality in southern Ontario. The application requests that MOE establish a regulation that would enable municipalities to recoup the costs of providing Blue Box programs to residents. The application also requests that the new regulation provide an incentive to producers and retailers to take full responsibility for reducing the environmental effects of packaging waste.

In its 1997 report to me, MOE states that the ministry has been consulting the public on alternate approaches to promoting refillable containers. In addition, the ministry states that it has referred the related issues of funding the Blue Box system and clarifying roles and responsibilities in the province's solid waste management system to the Recycling Council of Ontario (RCO). The RCO, in turn, "has assembled a broad range of stakeholders to develop options to address product stewardship issues; specifically to address the sustainability of the Blue Box program." The ministry states it will "consider the RCO's recommendation with respect to this issue."

In its 1997 report to me, the Ministry of Consumer and Commercial Relations states that it will facilitate the exchange of environmental, scientific and economic information between the Liquor Control Board of Ontario and MOE on refillable container technologies.



ECO Commentary

The *Environmental Bill of Rights* asks Ontario ministries to integrate economic, environmental, social and scientific considerations when they make decisions that may affect the environment. The evidence that I have reviewed indicates that refillable bottles are a good choice for the environment and make good economic sense, too.

While revising its refillable soft drink regulations, the Ministry of the Environment has an opportunity to promote a sustainable system for packaging and distributing beverages based on refillable containers that:

- Maximizes environmental benefits and minimizes environmental damage
- Lets consumers choose and enjoy high-quality products
- Keeps Ontario industries competitive
- Conserves energy
- Shifts responsibility for managing packaging waste from taxpayers to the producers and users of packaging

Waste issues are of great importance to Ontario residents. Decisions about beverage packaging waste will have a significant impact on the abilities of the province and municipalities to manage waste problems. There is strong public support for innovative solutions to these problems. It is time for the Minister of the Environment to act.

I repeat the recommendations I made in my first and second Annual Reports:

- The Ministry of the Environment should announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently under way are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of the Environment should begin to enforce the refillable soft drink container regulations under the EPA.
- The Ministries of the Environment and Consumer and Commercial Relations should undertake environmental, economic and social research on the benefits and costs of adapting new refillable container technologies to Ontario's beverage industries and implementing a deposit-refund system for liquor containers, and make the information public.

Ontario Hydro

A number of applications alleged that Ontario Hydro has discharged large quantities of heavy metals into the Great Lakes due to the erosion of brass condenser tube walls at its power plants. Investigations were undertaken by the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR) and are expected to be completed in 1998.

In July 1997, Hydro also struck a panel of internal and external experts to review its nuclear operations. The panel recommended that the brass condensers be replaced, or coated, at several locations, and that programs be developed at fossil fuel plants to minimize metal emissions.

The recommendations regarding management problems at Ontario Hydro were more far reaching. According to the expert panel, there were "gaps and inadequacies in the management system in the areas of environmental accountability and awareness." Management exercised

"poor judgement by not formally advising MOE . . .

The relationship with MOE . . .

. . . was to tell MOE the minimum required." The panel concluded that "there does not

appear to be a strong environmental ethic within Ontario Hydro's nuclear business." A

follow-up third-party assessment, undertaken in December 1997, concluded that Hydro had made a determined effort to implement many of the recommendations of the expert panel.

In September 1997, the Ontario Legislature formed a "select committee" to scrutinize Hydro's recovery plan, which called for mothballing seven reactors and upgrading the remaining 12. In October, a "Nuclear Report Card" indicated that Hydro had achieved its target of upper quartile ratings for most performance indicators set by the World Association of Nuclear Operators.

For its part, MOE issued a Director's Order under the *Ontario Water Resources Act* (posted on the Environmental Registry in August 1997), requiring Hydro to determine the corrective action needed to minimize future releases of metals and the time frame required to implement the corrective action. The Order also required Hydro to undertake further investigations into the precise nature of the problem and its effects.

In a separate Director's Order under the *Environmental Protection Act*, MOE attempted to address the elevated tritium levels detected in the groundwater in the vicinity of the Ontario Hydro Pickering Nuclear Generating Station heavy water upgrading plant.

ECO Commentary

MOE reacted quickly once environmental problems at the Ontario Hydro Nuclear Division came to light. I will continue to monitor developments, including the results of the MOE and MNR investigations.



Plastimet Fire

During 1997 I received an application that alleged violations concerning the plastics fire at the Plastimet recycling facility in Hamilton.

The Background

The Plastimet fire started on July 9, 1997, and raged for three days in a mixed industrial and residential neighbourhood of the city. It consumed 400 tonnes of plastic, including polyvinyl chloride (PVC), and resulted in a one-day evacuation of area residents because of fears about airborne toxics. (One of the by-products of PVC combustion is dioxin, an extremely toxic substance that is thought to cause cancer and disruptions to endocrine systems.) The company had been cited by the Hamilton Fire Department with a number of Ontario Fire Code violations in October 1996, and at the time of the fire, had yet to install a sprinkler system and prepare a fire safety plan.

In September 1997, when the owners of the plant, in breach of an MOE Order, failed to clean up the fire-ravaged site in a timely manner, the Ministry of the Environment (MOE) took it over and assumed responsibility for the cleanup. A ministry Order under the *Environmental Protection Act* (EPA) requiring Plastimet to pay the costs of the cleanup was appealed by the company in early 1998.

At the request of the Solicitor General, the Ontario Fire Marshal investigated, and in an August 1997 report, called for strengthening the regulatory controls on recycling operations. The Fire Marshal's report recommended that recycling facilities that are not required to obtain a certificate of approval (C of A) from MOE be required to meet the following conditions prior to start up:

- "confirmation from the local municipality that the facility complies with local zoning bylaws and is not in close proximity to sensitive land uses (e.g., schools, hospitals, etc.)."
- "confirmation from the local fire department that the facility is in compliance with fire safety requirements."

The Fire Marshal, noting that Standardized Approval Regulations could be used to set out these requirements, also made a number of other recommendations, including proposed changes to the Ontario Fire Code.

The Application

The application under the *Environmental Bill of Rights* alleged that MOE contravened the EPA, both because of the ministry's slow response to the fire, and because the ministry had issued a C of A to Plastimet while knowing that the company was not in compliance with environmental regulations and the Fire Code.

MOE denied the application. The ministry also denied that its response was untimely. MOE said that applicants cited inappropriate sections of the EPA and that charges could not be laid against the ministry under those sections. The ministry also said it could not have improperly issued a certificate of approval to Plastimet, as a C of A is not required for Plastimet's activities.

ECO Commentary

My review shows that under Reg. 347 of the EPA, activities are exempted from the requirement to obtain a waste management C of A only if a company is storing recyclables to meet a realistic market demand. However, if there is no realistic market demand, the exemption does not apply. MOE cited no evidence that there was a demand for the plastics stored at Plastimet, and the ECO has found that markets for recycled PVC plastics have been weak for at least two years. The ministry failed to explain why a C of A was not required and why it considered the Plastimet operation to be exempt from the requirements. My review also showed that while the ministry correctly denied this particular application, it missed an opportunity to explain what evidence it used to decide that Plastimet did not require a C of A.

I also found that the ministry is not moving in the direction recommended by the Ontario Fire Marshal to strengthen regulatory controls on recycling facilities. Previously, in reviewing its own regulations in 1996, MOE had indicated that it would continue to exempt from EPA waste approval requirements those sites and facilities that accept and store recyclable material that meets a realistic market demand and to modify its definition of waste to allow more types of recyclable materials to be exempt from waste approvals. In 1997 the Minister of the Environment confirmed his intention to proceed with exemptions for companies dealing with certain recyclables.

MOE has told the ECO that "... the Ministry is working with the Fire Marshal's Office in reviewing the 12 recommendations made in its report on the Plastimet fire. As part of this review, the Ministry is considering notification to local municipalities as one of the requirements that a facility must comply with under the standardized approval regulations (SARs) before it can begin to operate."

I will monitor these proposed amendments and whether MOE has adequate safeguards in place to ensure that exemptions from the EPA approvals do not result in increased risks to public safety and the environment. The public will have another opportunity to comment on the proposed changes to Reg. 347 when they are posted on the Registry for public consultation in 1998.

Permits to Take Water

The 1994-95 ECO Annual Report included a recommendation that ministries work together to review and upgrade Ontario's groundwater management framework. The permits to take water issued by the Ministry of the Environment (MOE) are an integral part of managing and protecting groundwater quantity.

Anyone taking more than 50,000 litres of water per day is required to obtain a permit to take water (takings for domestic needs and some farming needs are exempted from this requirement). Permits are issued for a variety of purposes, including municipal water supplies, industrial uses, irrigation, wetland creation, aggregate extraction, commercial water-bottling operations, and snowmaking. MOE posts proposals for most long-term permits (i.e., those permitting water-taking for more than one year) on the Environmental Registry for public comment. Since December 1994, MOE has posted almost 1,000 proposals for water-taking permits.

Many of these permits are issued without concerns being raised by adjacent water-users. In some cases, however, water-taking permits meet with substantial resistance. Those that cause most concern include water-taking for commercial water-bottling, aggregate extraction and irrigation (often for golf courses).

Concerns about dewatering — pumping water out — for an aggregate operation in Dunnville, Ontario, were raised through three different EBR processes in 1997: an application for investigation, comments submitted on a new permit to take water for the operation, and a subsequent application for leave to appeal the ministry's decision to issue the permit. Members of the public were concerned that the dewatering would lower the groundwater table, causing wells and ponds to dry up. In another case, a proposed permit to take water for snowmaking for a ski hill and irrigation of a golf course in Dufferin County resulted in eight comments being submitted to the ministry. (See p.73 for further discussion of this case.)

Summary of Concerns Raised in Relation to Permits to Take Water:

- Incomplete understanding by MOE of hydrogeology and potential impacts, including cumulative impacts, of water-taking prior to issuing permits.
- Lack of enforcement by MOE of terms and conditions of permits.
- No expiry dates on permits.
- Insufficient notice provided by MOE to members of the public regarding proposed water-takings.

ECO Commentary

Continued concern with groundwater issues underscores the need for a comprehensive groundwater management strategy in Ontario. In my 1994-95 Annual Report, I recommended that ministries review and upgrade Ontario's groundwater strategy. MOE indicates that it is working with other provincial ministries to develop such a strategy, and that issues highlighted in my 1996 Annual Report are being considered in its development. I look forward to the release of this strategy, which should address some of the deficiencies of MOE's current permit to take water program.

Recommendation 25

MOE, MNR, MMAH and OMAFRA should make public the progress they have made to date in developing a groundwater strategy, and indicate when the strategy is expected to be completed.

Watershed Management

Three related applications during 1997 involved drainage problems allegedly resulting from poor watershed planning. In separate applications to the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR), the applicants requested a review of the need for a watershed management plan. More specifically, they also requested an investigation into the alleged failure of MOE to enforce conditions of a certificate of approval (C of A) issued to a nearby recycling plant requiring it to correct surface drainage problems. As a result of these drainage problems, a serious washout caused erosion on the applicants' property.

MOE undertook the investigation and found that the C of A conditions were not being violated. However, the applicants' request for a review of the need for a watershed management plan was denied by both MNR and MOE on the basis that this was not a provincial responsibility. The ministries referred the applicants to the municipality and the local Conservation Authority.

ECO Commentary

The ministries' response to these applications was not helpful to the applicants. My staff followed up on the applications and found that MOE, MNR, the Ministry of Transportation, the regional municipality and the local Conservation Authority have met on this particular problem a number of times. Thus far, they have not been able to develop a satisfactory solution to the problem.

Though the local Conservation Authority is currently looking at specific measures to assist the applicants, at this time the Authority can only afford to provide consulting support. In recent years, MNR has substantially cut its share of funding to Conservation Authorities, from 33 per cent to 5 per cent. The ability of Conservation Authorities to undertake activities such as erosion control and watershed management planning is severely limited. A recent Ontario government report declares that as of 1997, provincial funding will no longer be available for watershed or sub-

watershed planning projects — although MNR has told the ECO that "a more recent decision retains watershed planning as an item that MNR could consider to fund."

The ministries' response to the application is particularly troubling since both ministries indicate in their Statements of Environmental Values that they have adopted an ecosystem approach to resource management and environmental protection. And MOE's 1997 business plan states the ministry will provide "... guidance on watershed plans...." However, in refusing to undertake the review, MOE indicated concern that any actions the ministry took would duplicate those of the local municipality and be at variance with policies contained in the Provincial Policy Statement under the *Planning Act*.

This application also highlights the difficulties people have in getting a problem resolved when several ministries as well as municipal organizations are involved. The gaps and overlaps in jurisdiction over watershed management matters can become a basis for allowing problems to continue unaddressed for many years. Local authorities facing watershed management issues often rely on leadership and advice from the province. At the same time, watershed management problems need to be dealt with on an ecosystem basis and not on the basis of political boundaries. This kind of approach, however, needs provincial leadership to be viable.

Recommendation 26

MOE, MNR and MMAH should encourage the development of watershed management plans at the local level, and provide both technical and financial resources and assistance to municipalities and Conservation Authorities in developing such plans.



Instruments

What are instruments?

Companies or individuals must get legal documents – such as licences, orders, permits or certificates of approval – from ministries before they can carry out activities that will have a significant effect on the environment. Under the *EBR*, these documents are called “instruments.” They are normally issued, for instance, before a company can operate a gravel pit, discharge pollution into the air or take large quantities of water.

Classifying Instruments

Under the *Environmental Bill of Rights*, ministries must “classify” the instruments they issue according to how environmentally significant they are. This is an extremely important step for Ontario citizens who want to use their rights under the *EBR*. Classification determines the type of approvals that will be posted on the Environmental Registry for public comment and the extent of the opportunities there will be for public participation, appeal, review and investigation. The public can use these *EBR* processes only for instruments that are classified.

The Ministries of Natural Resources, Northern Development and Mines, and Consumer and Commercial Relations had to classify their instruments within a reasonable time after April 1, 1996.

Ministry of Natural Resources (MNR)

In 1997, MNR fulfilled its *EBR* requirement to develop a draft instrument classification regulation. The ministry's second version of the proposed regulation reflects a determined effort to address some of the concerns raised by members of the public during the first comment period. MNR worked hard on the instrument classification process, and ministry staff are to be commended for undertaking two notice and comment periods on this regulation. However, the delay in the finalization of the regulation delayed as well the ability of Ontarians to use the *EBR* fully with respect to the permits and approvals the ministry issues. For example, Ontario residents have not been able to ask for reviews of existing permits for aggregate operations, or to apply for investigations of contraventions of the conditions of these permits.

MNR's instrument classification proposal does not comply with the intent of the *EBR*. Some environmentally significant instruments are still left out of the proposal. Because of this, for example, members of the public will not be able to comment on MNR proposals to grant a sustainable forest licence to harvest forest resources, or on proposals to supply forest resources to an individual or company. (To its credit, however, it should be noted that MNR is voluntarily posting forest management plans, which let people know how timber operations will comply with laws and other requirements for sustainable forestry practices.)

There are also gaps in public participation created by the interaction of MNR's activities and the *Environmental Assessment Act (EAA)*, due to exceptions created by the *EBR*. Although the ministry's second version of its classification regulation contains more instruments than its first, many instruments will not be posted on the Environmental Registry for notice and comment, since they are exempted from or covered by the *EAA* and thus also from the public participation requirements of the *EBR*, under *EBR* s.32. MNR is using the s. 32 *EBR* exception in a legally correct manner, but the result, unfortunately, will still remove many of the permits, licences and approvals granted by the ministry from public scrutiny. The ministry is also proposing a regulation that would define certain classified instruments as "field orders," removing them from all of the public participation processes of Part II of the *EBR*.

Ministry of Northern Development and Mines (MNDM)

The Ministry of Northern Development and Mines drafted its proposal for instrument classification in 1997. The proposal was posted on the Environmental Registry for 90 days, from May 15, 1997, to August 13, 1997, and included the actual text of the proposed regulation. Other public consultation, primarily with the minister's Mining Act Advisory Committee, was also undertaken.

At the end of 1997, MNDM had not yet finalized this regulation. Thus, the public is still unable to see proposals for mining operations and to use the *EBR*'s opportunities for comment, review and investigation.

Ministry of Consumer and Commercial Relations (MCCR)

MCCR drafted its proposal for classifying instruments and posted it on the Environmental Registry in late June 1996, and again in December 1996. MCCR reported to the ECO that it had prepared the text of the regulation and given it to the Ministry of the Environment in mid-1997, for inclusion in MOE's environmental regulatory reform package, "Better, Stronger, Clearer." The proposed regulation was posted in late 1997.

Can the Public Influence Decisions?

Guelph

Registry # IA7E0714.D

description PPM Canada applied for a change to their existing certificate of approval that would permit PCB waste to be transferred to their site for repackaging prior to being taken to the U.S. for incineration.

public comments Fourteen people commented on the application, four of them through the Environmental Registry. They were concerned about the impacts on existing and planned residential areas, about groundwater contamination through the site's porous soil, and about the potential for a fire or a spill. People pointed out that the PCBs would have to be transported through a heavily populated area.

decision Because of these public concerns, PPM Canada withdrew its application.

Can the Public Influence Decisions?

Newmarket

Registry # 1A7E0402

description Malecki Drum Inc. applied for a permit to store on site the liquid wastes left at the bottom of the steel and plastic drums they recondition and recycle.

public comments A member of the public commented on the Registry proposal suggesting that the company should ensure that any spillage from the liquid waste storage tank be contained.

decision MOE included a condition in the permit that Malecki Drum install a containment system around the tank.

Ministry of the Environment (MOE)

At the end of 1997, MOE posted amendments to its *EBR* instrument classification regulation on the Environmental Registry. The original proposal, which was part of MOE's regulatory reform initiative, "Responsive Environmental Protection," proposed removing certain instruments from the Registry posting requirements of the *EBR*. Because of comments received from the public, as well as future ministry plans for standardized approvals, MOE decided not to remove those instruments from its instrument classification regulation.

Recommendation 27

The ministers of MNR, MNDM and MCCR should ensure that their instrument classification regulations are finalized as swiftly as possible, in a manner consistent with the purposes of the *EBR*.

Why Instruments are Important: Environmental Impacts at the Local Level

A resort in Dufferin County applied for a permit to take water for snowmaking and irrigation from two spring-fed ponds located next to the Nottawasaga River. The resort had been taking water for its golf and ski operations for six years without a valid permit, and had received no complaints. The applicants applied to take water for irrigation to a maximum of 650,000 litres per day, and for snowmaking to a maximum of 1,500,000 litres per day.

The 30-day comment period on this instrument proposal, posted on the Environmental Registry in April 1996, was extended to 70 days in response to requests from members of the public. The eight comments submitted to the Ministry of the Environment (MOE) all expressed concern about the amount of water being taken and the potential effects on water flow in the Nottawasaga River. Several commenters asked that the exact source of water in the ponds be determined prior to the permit being issued. The river is a spawning ground for salmon and rainbow trout, people pointed out, and declining water levels could harm these species.

In May 1997, MOE issued a permit, without an expiry date, approving the amounts of water requested by the resort. The ministry did add some conditions to the permit in response to the concerns people had raised, requiring the resort to monitor and report to MOE on the streamflow of the Nottawasaga River. However, MOE did not require the resort to undertake a full study to determine the hydraulic connection between the ponds and the river before issuing the permit.

ECO Commentary

Since the resort had been taking water for six years without complaint, requiring a full hydrological study before issuing the water permit may not have been warranted. However, MOE could have issued a short-term permit, instead of one without an expiry date. This would have given the ministry an opportunity to revisit the conditions of the permit if the monitoring report began to show negative impacts on the river from the water-taking.

Can the Public Influence Decisions?

Peterborough

Registry # IA7E0790

description A local injection-moulding and electroplating firm, Formax Enterprises, had already failed to comply with prior MOE Orders to clean up its property, where wastes were being illegally stored. MOE investigations revealed that chromium-contaminated surface waters were flowing from the property into the Otonabee River. The ministry drafted Orders that would require Formax to hire a consultant to implement a remediation plan to remove the wastes, protect surface and groundwater, and identify any off-site contamination caused by the property's contaminated soil.

public comments The nearby City of Peterborough recommended that the company be required to identify all off-site contamination, including contamination caused by surface and groundwater as well as by contaminated soil, and that the consultant's plan should also address remediation of off-site and on-site contamination.

decision MOE changed its Orders according to the city's recommendations.



Other Legal Rights

Other Legal Rights

The *Environmental Bill of Rights* gives several important legal rights to the people of Ontario. They now have the right to appeal certain government decisions; the right to sue if someone is breaking, or is about to break, an environmental law and is harming a public resource; and the right to sue for compensation for direct economic or personal loss because of a public nuisance that is harming the environment. Under the *EBR*, Ontarians also have protection against reprisals for reporting environmental violations in the workplace.

Appeals

The *EBR* allows members of the public to apply for leave to appeal ministry decisions to issue certain instruments, such as the permits, licences or certificates of approval that ministries issue to industrial facilities. (Neighbours, for example, may want to appeal the approval given to a company to discharge chemicals into the environment.) The person asking for the permission to appeal a permit or licence must apply to the proper appeal body, such as the Environmental Appeal Board (EAB), within 15 days of the decision being posted on the Environmental Registry. They must show they have an "interest" in the decision, that no "reasonable" person could have made the decision, and that it could result in significant harm to the environment.

Status of Appeals

At the beginning of 1997, one application for leave to appeal was pending before the EAB. Two additional applications for leave to appeal were posted on the Environmental Registry. While two of these applications were denied, another was successful.

To make sure that Ontario residents have information about the opportunity to participate in appeals on approvals granted by ministries, the *EBR* also requires that the Environmental Commissioner of Ontario post on the Registry any appeals of instruments that are made by the companies or people who hold them. During 1997, five such notices of appeal were posted on the Environmental Registry. Of these regular instrument holder appeals, three were withdrawn.

The Right to Sue: Public Nuisance

Any person in Ontario who experiences direct economic or personal loss because of a public nuisance causing environmental harm – such as a widespread pollution problem – may sue for damages or other personal remedies under section 103 of the *EBR*. (There is an exception that may protect farmers against public nuisance lawsuits relating to odour, noise and dust under the *Farm Practices Protection Act*.) In contrast, individuals and citizen groups in almost every other part of Canada have limited access to the courts when they want to sue for public nuisances.

The *Environmental Bill of Rights* eliminates some previous barriers to people's ability to sue for public nuisances. It eliminates the need for people to have the Attorney General of Ontario either take on their case or give consent to the case being undertaken. The *EBR* also clarifies that direct damages are recoverable, and specifies that the person does not have to suffer unique economic damages or personal injuries to make a successful claim.

Two Landmark Public Nuisance Cases

Two landmark cases were filed during 1997, relying in part on the public nuisance provisions of the *Environmental Bill of Rights*.

First Public Nuisance Case - The Keele Valley Landfill

In February 1997, the first public nuisance case relying on section 103 of the *EBR* was filed in the Ontario Court of Justice in Whitby on behalf of 30,000 residents of Maple and Richmond Hill. These residents are suing the Municipality of Metropolitan Toronto (now the City of Toronto) on the grounds that odours, noxious gas, debris and noise have emanated from the Keele Valley landfill since it began operations in 1983 and that these emissions have caused harm to local residents.

This is a class action suit under the *Class Proceedings Act* (only possible since 1993, with the passage of the *Class Proceedings Act*). Toronto faces a \$600 million claim – \$500 million in compensatory damages and \$100 million in punitive damages. In addition, the residents are seeking an injunction preventing Toronto from continuing to pollute the local environment.

Second Public Nuisance Action - Fort Erie's Water System

In August 1997, a Fort Erie resident began a class action proceeding against the Town of Fort Erie, her local municipality, which operates a municipal water system, and the Regional Municipality of Niagara, which owns and operates the water treatment plant that supplies Fort Erie's water system.

The plaintiff alleges that the water supplied to residents is frequently contaminated by iron rust and microorganisms present at levels that exceed the Ontario Drinking Water Objectives and the Guidelines for Canadian Drinking Water Quality. She also claims that the contaminated water is a nuisance, and she relies on s.103 of the *EBR* on that ground. In addition, she claims that the defendants are liable for trespass, breach of contract, negligence and negligent misrepresentation, and for loss or damage under the *Environmental Protection Act*. She is seeking \$30 million in damages on behalf of the class of residents and an injunction preventing the defendants from adding corrosion inhibitors to the water they supply.

The ECO is monitoring these landmark cases and will report on future developments.

The Right to Sue for Harm to a Public Resource

The *Environmental Bill of Rights* gives Ontarians the right to sue if someone is violating, or is about to violate, an environmentally significant act, regulation or instrument, and has harmed, or will harm, a public resource. This right was not used during 1997.

Whistleblower Rights

The *Environmental Bill of Rights* protects employees from reprisals if they report the unsafe environmental practices of their employers or if they use their rights under the *EBR*. There were no whistleblower cases in 1997.

Leave to Appeal: Waste Disposal Site — Aaroc Aggregates Ltd (Aaroc)

In April 1997, the Ministry of the Environment (MOE) granted Aaroc Aggregates Ltd. a certificate of approval (C of A) for a waste disposal site that would allow the company to receive a maximum of 1,500 tonnes of construction and demolition waste daily and to process this waste for recycling. The maximum amount of waste allowed to be stored on the site was 100,000 tonnes. The site is an existing aggregate operation and is located on the Westminster/West Oakes aquifer in Middlesex County, just outside London, Ontario.

The people who applied to the Environmental Appeal Board (EAB) for permission to appeal Aaroc's certificate of approval live within 1.6 km of the site and rely on well water from the Westminster/West Oakes aquifer for drinking and other uses.

The applicants gave several reasons why they believed the ministry acted unreasonably and why the environment would suffer significant harm. The municipal zoning for the site does not permit the operation of a waste recycling facility, the applicants stated, and the site was previously operated without a C of A. It is not reasonable, the applicants added, to issue an approval to a company with a history of contraventions of provincial environmental laws. The applicants also noted that the ministry had not considered their concerns about the groundwater aquifer which underlies the site and surrounding area: MOE's hydrogeologist was not consulted to assess potential impacts on the aquifer, and the need for surface water protection was not considered prior to granting the approval. Thus, the applicants claimed, the ministry's decision could result in significant harm to the environment, specifically to the Westminster/West Oakes aquifer, and could have nuisance impacts on residents of the area surrounding the site.

In its reply to the application, Aaroc stated that the approval will

allow it to mix construction and demolition waste with the limited gravel resources available at the site, allowing them to reduce the amount of gravel that needs to be removed from the site. The company also stated that "there is no significant nuisance associated with the operation."

The EAB found that the applicants succeeded in showing good reason to believe that the ministry acted unreasonably on one of the grounds alleged — inadequate consideration of groundwater and surface water issues. Nevertheless, the applicants failed to show that the ministry's decision could result in significant harm to the environment. Therefore, the application for leave to appeal was denied.

The EAB added an important note: If the EBR right to leave to appeal is to be meaningful, the Board stated, the information and expert opinion relied on by the ministry should also be accessible to leave applicants. "Very few people will have the time, resources and experience to use the *Freedom of Information and Protection of Privacy Act*," said the Board, "when compiling their submission under severe time constraints."

Recommendation 28

The ministers of MOE, MNR, MNDM, MMAH and MCCR should make available to applicants and their counsel appropriate information and expert opinions when they apply under the EBR for leave to appeal, instead of requiring the applicants to request this information under the *Freedom of Information and Protection of Privacy Act*.

Leave to Appeal: Waste Processing Site — County of Northumberland

In summer 1996, residents in Northumberland County applied to the Environmental Appeal Board (EAB) for permission to appeal the decision of the Ministry of the Environment to amend the county's provisional certificate of approval for its waste processing site. The applicants maintained that the changes would result in a higher landfill disposal rate and therefore greater harm to the environment. Their application was denied on August 1, 1996, and the EAB issued its reasons for denying the application in February 1997.

Although the EAB found that the applicants had an interest in the decision — as people who had attended public hearings on the matter and were residents of the county where the system was located — the Board ruled that the residents failed to provide any evidence that the ministry's actions were unreasonable or that significant harm to the environment would result from the amendment to the certificate of approval.

The EAB also noted that the County of Northumberland has agreed to incorporate some of the applicants' suggestions into the operational procedures for the facility.

Petro-Canada Case

In my two previous Annual Reports, I discussed a landmark case involving the appeal of a certificate of approval held by Petro-Canada Products. I also talked about the impact of the cancellation of the Intervenor Funding Project Act, which provided up-front funding to people who wished to take part in hearings before appeal bodies such as the Environmental Assessment Board. The following illustrates the difficulties and financial obstacles members of the public now face when they use legal processes to protect the environment for themselves, their families and their community.

In September 1995, the Ministry of the Environment (MOE) granted two certificates of approval — one for air and one for water — to Petro-Canada for an expansion of the lubricant production process at its Mississauga plant.

Prior to granting these approvals, MOE posted notices of the proposed instruments on the Environmental Registry, as required by the EBR, and received 531 comments from the public during the 30-day comment period. An additional 548 comments were received after the comment period ended, most of them requesting an environmental assessment of the expansion. Clearly, there was a great deal of public interest in this project. Shortly after the certificates of approval were granted, appeals of the instruments were launched by members of the public.

The first hurdle the applicants had to cross was obtaining leave to appeal from the Environmental Appeal Board (EAB). The test for leave to appeal is stringent: the EAB must have good reason to believe that no reasonable person could have granted the instrument being appealed, and the granting of the instrument could result in significant harm to the environment. Applicants for leave to appeal generally require legal representation and ample resources to gather sound and convincing evidence. Since the passage of the EBR in 1994, there have been only three cases where leave to appeal a certificate of approval was granted to applicants, and 12 cases where it has been denied.

In June 1996, the EAB announced its decision to grant the applicants leave to appeal one of the certificates of approval (air) on limited grounds. Now the applicants faced another tough legal battle — to win the appeal. They were opposed by two parties: the Legal Services Branch of MOE, whose role it was to defend the decision of the ministry to grant the certificate of approval; and the instrument-holder, Petro-Canada, which was defending the terms of the certificate of approval.

One applicant, Greenpeace, joined forces with the Sierra Legal

Defence Fund (SLDF), a nonprofit environmental advocacy organization that provides free legal services to citizens and groups with environmental concerns. A citizen's group applicant, Residents Against Company Pollution (RACP), hired a private law firm to represent it. One applicant continued to appear on her own behalf. Petro-Canada was represented by a large Toronto law firm.

In the time between the granting of leave to appeal and the beginning of the actual appeal hearing, Petro-Canada and MOE launched seven procedural motions, each of them requiring appearances by counsel and sometimes expert affidavit testimony. In addition, there was extensive correspondence between all the lawyers and some attempts at negotiating a settlement. The proceedings were extremely costly. Indeed, RACP ran out of money shortly after the hearing began and had to let their lawyers go, although some RACP members continued to be present at the hearing. Greenpeace was able to obtain funding from the Greenpeace Charitable Foundation to pay for the scientific research and detailed evidence necessary to support their case, since SLDF did not have a budget for this. A witness statement from a U.S. expert, explaining how Petro-Canada's refinery process fell below U.S. standards and how it could be upgraded, turned out to be crucial in expediting the final terms of settlement.

The hearing itself began on November 28, 1996, and lasted 19 days before the parties and the EAB finally agreed to a settlement. During the hearing, the EAB heard testimony from expert witnesses describing the potential environmental impacts of Petro-Canada's manufacturing processes. The terms of settlement, which were described in last year's Annual Report, were considered to be a fair compromise among the parties, satisfying the EAB that the settlement was in the best interests of the public and represented an improvement in the protection of the natural environment.

The Petro-Canada case can be called a victory for the citizens who challenged MOE's actions, and an illustration of how use of the EBR led to greater environmental protection. However, it also highlights the formidable barriers facing concerned residents. Litigants face enormous costs and time commitments when they oppose instruments MOE issues to industries, and many are discouraged by these barriers in spite of the merits of their cases. The rules of the EAB do not allow it to award costs to any party in an appeal. Because of the costs involved, the Petro-Canada case might not have been brought to a successful conclusion had it not been for SLDF and Greenpeace.



Decision-making Processes

The following summary is based on my review of decision-making processes as reflected by ministry postings for policies, acts and regulations on the Environmental Registry. The following ministries made environmentally significant decisions using the Registry in 1997: Environment (MOE), Natural Resources (MNR), Municipal Affairs and Housing (MMAH), Consumer and Commercial Relations (MCCR), Transportation (MTO), Northern Development and Mines (MNDM), Agriculture, Food and Rural Affairs (OMAFRA), and Management Board Secretariat (MBS).

SEV Consideration

Ministries considered their Statements of Environmental Values (SEVs) when developing most proposals posted on the Registry. MOE provided reliable documentation of SEV consideration when it was requested. Although MNR failed to provide documentation of how its SEV was considered in the development of some 1997 decisions, SEV consideration, when provided, was thorough.

Posting Potential Environmental Effects

Many postings failed to provide information on the potential environmental effects of proposals. For example, none of MMAH's and only about one-third of MNR's proposal postings included this information. On the other hand, MOE described potential environmental effects in more than half of its postings and, beginning in July, consistently posted Regulatory Impact Statements with its regulation proposals. MCCR was the only ministry in 1997 to provide information routinely on potential environmental effects in proposal notices.

Posting at the Right Time

During 1997, some proposals were posted too late in the decision-making process. For example, MOE's Drive Clean program was posted after the ministry had announced its decision to undertake the project. Several of MNR's policies were also posted late. For example, management plans for an Area of Natural and Scientific Interest (ANSI) and a Provincial Nature Reserve, and a land use plan for the Madawaska Highlands, were posted as proposals after the plans had been approved.

Extending Comment Periods (beyond the 30-day minimum)

Ministries frequently provided extended comment periods. Fifty-three per cent of MOE proposals and 33 per cent of MNR proposals had comment periods longer than the minimum. However, some ministry proposals should have had longer comment periods. For example, MOE provided only 30 days for comment on a complex proposal to amend its general waste regulation, despite receiving two requests that the comment period be extended. MOE also provided only 30-day comment periods for several proposals posted during busy holiday seasons (summer and Christmas). During June and July 1997, MNR posted seven forest management policy proposals with overlapping comment periods, but only provided the minimum 30 days for each.

Including Full Contact Information (contact name, phone and fax number)

Most ministries consistently provided full contact information. MTO was an exception. None of the ministry's 1997 proposal postings included a contact name, and only one included a phone number.

Posting Decision Notices Promptly

MNR posted decision notices promptly after decisions had been made in 1997, a significant improvement over 1996. MMAH also posted decisions promptly. Decision notices were not posted promptly by MOE, continuing a 1996 trend. For example, MOE took an average of 156 days to post decisions on regulations in 1997, and 94 days to post decisions on acts. MCCR also failed to post decisions promptly during 1997.

Describing How Public Comments Affected the Decision

These descriptions varied in quality, even within ministries. For example, MOE's description of public comments on Bill 76, amending the *Environmental Assessment Act*, was excellent. The ministry described each comment and the ministry's response to it, including what changes were made (if any) as a result of the comment. On the other hand, MOE's decision notice on Bill 57, amending the

Environmental Protection Act, provided no description of the concerns raised by commenters, or why the ministry decided that no changes were needed.

Telling Where to Get Written Material on the Proposal or a Copy of the Decision

Ministries did not always provide details about where members of the public could view written information on proposals. Additionally, for all decision postings by ministries, when a decision document existed, the public was informed of where to get it only 50 per cent of the time.

Recommendation 29

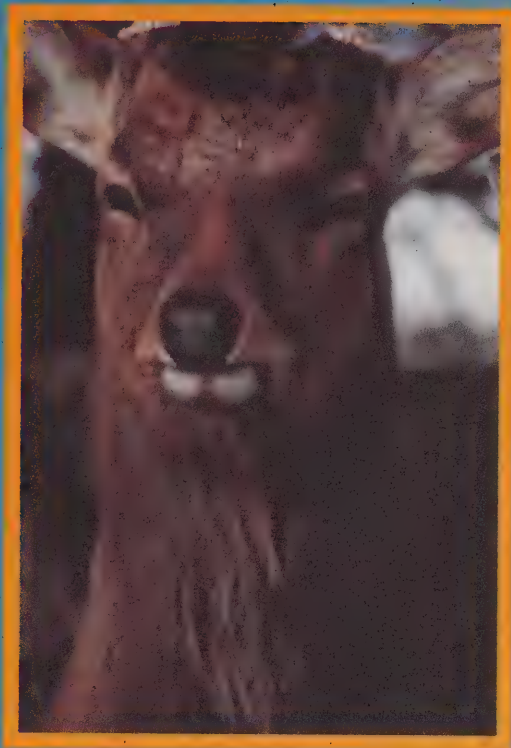
Ministries should ensure that all of the EBR procedural requirements for posting proposals and decisions on the Environmental Registry are followed by ministry staff, including the following:

- If a proposal changes substantially following its initial posting on the Registry – for example, if the initial posting is for a discussion paper that will eventually lead to new or amended legislation – and the proposal involves complex or controversial issues, ministries should post the proposal a second time once it is in legislative form for public release (e.g., once the proposed legislation has been drafted and tabled in the Legislature).
- Ministries should post decision notices on the Registry promptly after decisions are made.

Recommendation 30

Ministries are encouraged to consider the following measures in planning and implementing EBR notice and comment procedures:

- Whenever possible, ministries should include the actual text of proposals for new regulations and policies in Registry postings. Where the text is not included, ministries should clearly indicate whether further written information on proposals is available, and if it is, where.
- In Registry decision postings, ministries should include descriptions of the full range of comments received (including those that did not affect the decision), and, where possible, a ministry response to those comments.
- Where decisions are exempted from Registry posting requirements, ministries should consider posting information notices on the Registry to keep the public informed about environmental decision-making to the greatest extent possible.



Educational Initiatives

The *Environmental Bill of Rights (EBR)* requires that I provide education to Ontario residents about their rights under the *EBR*. My staff and I travelled across the province during 1997 to tell people what those rights are and how they can participate in the decisions ministries make about the environment. We talked to Rotary Clubs, municipal councils, faculty members and students at Ontario high schools, colleges and universities, community groups and conference participants. We met with business and municipal leaders, chambers of commerce, environmental groups, and provincial MPPs and government staff members.

The ECO's Public Information Officer responded to more than 1,500 inquiries for publications and information, which came into our Toronto office by phone, fax or through on-site visits. Staff members made full use of the informational video about the *Environmental Bill of Rights* and set up displays and distributed educational brochures. Workshops were held at colleges, universities and public libraries to demonstrate how people can use the Environmental Registry to find information about the environmentally significant proposals and decisions that ministries are making.

Working with Ministries

In our role of assisting ministries to comply with the *EBR* – in this case with the notice and public comment provisions of the act – we prepared and distributed a discussion paper in 1997, entitled "Implementing the *Environmental Bill of Rights: Exceptions*." The paper outlines a four-step process that will help ministries assess whether a proposal for a policy, act, regulation or instrument should be posted on the Environmental Registry for public comment – or as an exception. It provides an approach to the appropriate use of exceptions under the *EBR*, and sets out in detail the criteria for each of the exceptions and how to apply them properly.

ECO staff also travelled to Thunder Bay, Timmins and Peterborough in fall 1997 to join in training of MNR staff about the *Environmental Bill of Rights*. Feedback from ministry staff who participated in the sessions indicated that the training was helpful in understanding more fully the

principles of the *EBR* and how to apply them in their day-to-day environmental decision-making.

Community Visits

One of our most successful educational programs is the Commissioner's community visit, a one-to-three-day swing through a community, where my staff and I hold information sessions about the *EBR* and talk to residents about how they can use it to address particular environmental issues in their community. In the last two years, we've gone from Thunder Bay to Peterborough to Kenora to Ottawa. These encounters with the public are some of the most rewarding of my work as Commissioner.

In September 1997, we visited Windsor. No stranger to environmental conflicts, with air and water quality issues looming large, Windsor residents were sophisticated, receptive, and quickly understanding of how the *EBR* can empower them. So it was no surprise when we learned, a day or two into our trip, that a group of residents had filed the area's first application for review. Coverage of our visit, was intensive and complemented our educational goals. By meeting reporters from the Windsor Star and TV and radio stations, we reached far more people than we could have with our presentations, meetings and speeches.

We met with the Windsor mayor and city council, a local MPP, the acting president of the University of Windsor, the dean of the law school and numerous high school and environmental law and chemistry students. I spoke to the Windsor and District Chamber of Commerce and the Rotary Club. The public forum at the Windsor Public Library was an ideal way to hear from local people, including the Windsor Environmental Advisory Committee, the Windsor Air Quality Committee, the Canadian Auto Workers, and various other community organizations.

Resource Centre

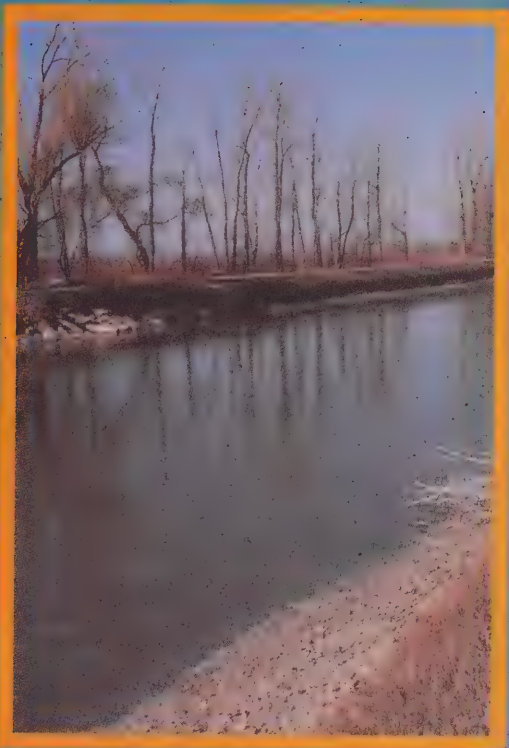
Our Resource Centre, open to the public, is home to a growing collection of environmental resource materials, focusing primarily on law and policy. During the past year, we acquired several new reference works, ranging from landfill engineering to the principles of environmental eco-

nomics and hazardous waste incineration. The collection includes Ontario government publications, federal government reports, environmental management literature, publications of non-governmental organizations, and a range of environmental periodicals. The ECO's library assistant answers questions, directs visitors to the material they're looking for, and helps with the use of the on-site computer terminal that gives people access to the Environmental Registry.

Spreading the Word

During the year, staff continued to distribute ECO publications – more than 36,000 in 1997. These included our 1996 Annual Report, *Keep the Doors Open to Better Environmental Decision Making*, and our useful guide, *Ontario's Environmental Bill of Rights and You*. During 1997 we also sent out more copies of our *ECONOTES* – 30 different factsheets on topics that range from environmental assessments and composting to how Ontario residents pursue specific rights under the *EBR*.

More than 3,000 people in Ontario now receive our newsletter, *EBRights*, which carries updates on the public's use of the *EBR*, reviews of new books in our Resource Centre, and information about ECO publications and about new initiatives taken on by staff members – for instance, the promotion of our 100-per-cent-cotton, free-of-charge, reusable lunch tote, specially commissioned in 1997 to celebrate the third anniversary of the *Environmental Bill of Rights*. In each issue of the newsletter, in "Commissioner's Corner," I sum up my thoughts on how ministries are complying with the *EBR*, and share my views on how best the mandate of the Environmental Commissioner of Ontario can be fulfilled.



Financial Statement

Notes to Financial Statement March 31, 1997

1. Background

The Environmental Commissioner, which commenced operation May 30, 1994, is an independent officer of the Legislative Assembly of Ontario, and promotes the values, goals and purposes of the *Environmental Bill of Rights, 1993 (EBR)* to improve the quality of Ontario's natural environment. The Office of the Environmental Commissioner monitors and reports on the application of the *EBR*, and participation in the *EBR*, and reviews government accountability for environmental decision making.

2. Significant Accounting Policies

(a) Basis of Accounting

The Office uses a modified cash basis of accounting which allows an additional 30 days to pay for expenditures incurred during the period just ended.

(b) Capital Assets

As is currently accepted for not-for-profit public sector entities, capital assets are charged to expenditure in the year of acquisition.

3. Expenditures

Expenditures are paid out of monies appropriated by the Legislature of the Province of Ontario.

Certain administrative services are provided by the Office of the Assembly without charge.

4. Pension Plan

The Office of the Environmental Commissioner provides pension benefits for its permanent employees (and to non-permanent employees who elect to participate) through participation in the Ontario Public Service Pension Plan (PSPF) established by the Province of Ontario.

The *Ontario Public Service Employees' Union Pension Act, 1994* provides for a reduction of the employer's contributions to the PSPF for each of the three fiscal years ending 1995-1997. For the current fiscal year, the impact of these reductions on the Office's pension expense was a reduction of \$45,100 (1996 - \$45,100).

The Office's share of contributions to the Fund during the period was \$14,589 (1996 - \$16,401) and is included in employee benefits in the statement of expenditures.

Office of the
Provincial Auditor
of Ontario



Bureau du
vérificateur provincial
de l'Ontario

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Auditor's Report

To the Environmental Commissioner

I have audited the statement of expenditure of the Office of the Environmental Commissioner for the year ended March 31, 1997. This financial statement is the responsibility of that Office. My responsibility is to express an opinion on this financial statement based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, this financial statement presents fairly, in all material respects, the expenditures of the Office of the Environmental Commissioner for the year ended March 31, 1997, in accordance with the accounting policies described in note 2 to the financial statement.

K.W. Leishman

Toronto, Ontario
July 22, 1997

K.W. Leishman, CA
Assistant Provincial Auditor

**Statement of Expenditure
For the Year Ended March 31, 1997**

	1997	1996
	\$	\$
Salaries and wages	978,223	1,030,035
Employee benefits (Note 4)	108,060	104,836
Transportation and communication	57,312	75,857
Services	346,833	597,181
Supplies and equipment	108,583	151,467
	1,599,011	1,959,376

See accompanying notes to financial statement.

Approved:



Environmental Commissioner

**Unaudited Statement of Expenditures for the
year ended March 31, 1998**

Salaries and wages	\$ 1,050,400
Employee benefits	\$ 232,900
Transportation and communication	\$ 58,400
Services	\$ 197,800
Supplies and equipment	\$ 64,900
Total	\$ 1,604,400

Public Sector Salary Disclosure Act

This statement is provided under the Public Sector Salary Disclosure Act. The following employees of the Environmental Commissioner of Ontario were paid a salary of \$100,000 or more during the reporting period.

Employee	Salary	Taxable Benefits
Eva Ligeti	\$128,732.23	\$326.12
Environmental Commissioner		



Summary of 1997 Recommendations

Part 2: The Environmental Registry

Recommendation 1

The Ministry of the Environment should ensure that the migration of the Environmental Registry to the Internet maintains access for people who use public libraries as an access point or who have a modem but no Internet access.

Part 3: Ministry Environmental Decisions

Consideration of Statements of Environmental Values

Recommendation 2

Ministers should ensure that their ministry Statements of Environmental Values are considered whenever they make environmentally significant decisions, whether or not such decisions are subject to the Registry posting requirements of the *EBR*.

Part 4: Detailed Reviews of Ministry Decisions and Proposals

Air Quality

Smog Plan

Recommendation 3

MOE should complete and publish a full list of the emission reduction actions that are still needed to achieve its stated air quality targets by the year 2015. The ministry should also establish interim targets, and should provide the public with annual updates on emission reductions achieved, trends in total emissions and air quality concentrations, and reductions still needed to meet near-term and long-term targets.

Improving public transit

Recommendation 4

All ministries, especially MMAH and MTO, should ensure their policies and priorities regarding land use planning and public transportation support MOE's efforts to control vehicle emissions. MMAH, MTO and MOE should develop a joint strategy to address the problem of the steadily growing vehicle population in Ontario, which is a major barrier to improving air quality.

Drive Clean Program

Recommendation 5

In developing its Drive Clean program, MOE should adopt the best practices of other jurisdictions and the recommendations of the Canadian Council of Ministers of Environment, particularly on issues such as the separation of vehicle testing facilities from vehicle repair facilities, and the training and certification of repair technicians.

Recommendation 6

MOE should ensure that emission trends of the Ontario vehicle fleet are accurately monitored and reported, and that the effectiveness of the Drive Clean program in reducing emissions is accurately evaluated through periodic independent audits and public reports.

Standard for inhalable particulates

Recommendation 7

MOE should set an enforceable, regulated standard for inhalable particulates, and develop a comprehensive compliance program to ensure the standard is met.

Three-Year Plan for Standard-Setting

Recommendation 8

MOE should ensure that its Three-Year Plan For Standard-Setting includes the following features:

- a fair and transparent process for considering eco-

nomic and technological limitations when developing POI standards from ambient air guidelines.

- a province-wide compliance program with public progress reports to ensure that facilities are meeting newly regulated air standards.
- monitoring and reporting by facilities emitting regulated air contaminants, permitting the ministry to develop and publish accurate emission inventories.
- regular updates on the Plan posted on the Environmental Registry.

MNR Resource Management

Lands for Life

Recommendation 9

MNR should use the "precautionary principle" stated in its SEV when it establishes the extent and sizes of land to be protected as Ontario's natural heritage features.

Recommendation 10

MNR should ensure that the Round Tables have the time and the background information on forestry resources, natural heritage features and tourism issues to allow them to make informed recommendations.

Recommendation 11

MNR should provide a mechanism for periodic review of the Regional Land Use Strategies, and for public notice and comment using the Environmental Registry.

Approach to Wilderness

Recommendation 12

MNR should clarify its policy on protection of roadless wilderness areas outside parks, and provide direction on how the policy should be applied during forest management planning.

Forest Management Guidelines for the Protection of the Physical Environment

Recommendation 13

To ensure that the Forest Management Guidelines for the Protection of the Physical Environment are applied in the field, MNR should give them the same mandatory status as other forest guidelines, and should require foresters to report when the guidelines are not applied.

Public consultation on Natural Resources

Recommendation 14

In light of the fact that MNR will be making major environmental policy decisions over the coming year, the ministry should ensure there is improved public involvement in decision-making. MNR should ensure that the following initiatives include public consultations involving: (a) Ontarians from all parts of the province; (b) public scrutiny of the best available maps, inventories and other information; and (c) adequate public comment periods on the Environmental Registry:

- Lands for Life Initial Options Reports and Preferred Options Reports.
- Regional Land Use Strategies. (Given the high public interest and complexity of the issues, the public should be allowed more than 30 days to comment on these.)
- Subregional Land Use Plans. (Where information gaps on natural heritage and tourism values have been identified, these should be addressed with updated inventories and maps).
- policies regarding extended tenure for the forest industry (especially since individual licences and wood supply agreements will not be posted on the Registry).
- policies, procedures and regulations regarding forestry compliance.
- policies on resource-based tourism.

Disposition and Sale of Crown Lands

Recommendation 15

MNR should ensure that all Ontarians are able to comment on decisions about the disposition of public lands, and should post on the Environmental Registry the ministry's annual province-wide plans and targets for disposition of Crown lands, and all proposals to sell specific parcels of Crown land.

Environmental Monitoring

Recommendation 16

Ministries should take stock of their environmental monitoring programs to ensure that they adequately cover their mandated responsibilities, and that they permit accurate, relevant reporting on the state of public resources such as air, water, wildlife and forests. To this end, ministries should ensure that:

- sound monitoring programs are in place that accurately assess progress toward their targets. Ministries should measure not only the level of ministry effort, but also the actual environmental results.
- environmental monitoring data, once gathered, also receive effective analysis, including geographical trends and trends over time.
- monitoring data and results of trend analysis are promptly reported to decision-makers and the public.
- new information provided by monitoring programs is applied in the work of the ministry, and is acted upon in the setting of targets and in other environmental decision-making.

Recommendation 17

Ministries should identify opportunities to strengthen their monitoring programs and improve their cost-effectiveness by:

- achieving multiple research goals within a given monitoring program.
- sharing their databases with other agencies having similar goals.

- adopting legislated reporting requirements in some key areas. Such requirements have been shown to be critical factors to the maintenance of a number of monitoring programs, such as MISA, Spills Reporting and the Forest Resource Inventory.
- adopting Geographic Information Systems (GISs) that permit consistency across government systems. GISs have the potential to become key tools for environmental monitoring programs. If they are well designed, they can allow not only geographic referencing of data, but also easy manipulation, analysis and sharing of large databases. Although they involve some investment, GISs can improve the overall cost-effectiveness of monitoring programs.

Voluntary Agreements

Recommendation 18

The ministers developing programs to promote environmentally significant voluntary agreements should establish a general legal and policy framework for their use, and broadly consult the public on this.

Recommendation 19

Ministers should ensure that voluntary agreements are developed with backdrop regulations that contain effective monitoring and reporting mechanisms and clear and measurable goals that allow for verification of results by the public.

Recommendation 20

The ministers entering into voluntary agreements should establish a clear role for public consultation in the design and implementation of individual voluntary agreements.

Alternate Service Delivery Systems

Recommendation 21

Ministers should ensure that alternate service delivery systems that replace or complement ministry laws, regulations, programs and policies are developed and implemented in accordance with the Registry posting and SEV consideration requirements of the EBR, and with the principles of good

management. In addition, ministry staff should ensure that, in addition to public notice and comment on the Registry, adequate and meaningful consultation with all interested persons, including industry officials, public interest groups and the public, is undertaken in the development of ASD systems.

Part 5: Reviews and Investigations

Fresh and Impartial Perspective

Recommendation 22

To obtain a fresh and impartial perspective, ministries are encouraged to assign the decision for undertaking a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue of concern.

Interim Drinking Water Standard for Tritium

Recommendation 23

Since the review of a drinking water standard for tritium has taken longer than three years, MOE should establish an interim standard pending the outcome of the federal review.

Areas of Natural and Scientific Interest

Recommendation 24

MNR should clarify any changes it plans to make to the ANSI program and post the proposal on the Environmental Registry for comment. MNR should clarify the degree of protection afforded to the natural heritage values of lands that have been designated as ANSIs, the criteria for identifying and evaluating ANSIs, and the ministry's procedures for confirming or changing an ANSI designation.

Permits to Take Water

Recommendation 25

MOE, MNR, MMAH and OMAFRA should make public the progress they have made to date in developing a groundwater strategy, and indicate when the strategy is expected to be completed.

Watershed Management

Recommendation 26

MOE, MNR and MMAH should encourage the development of watershed management plans at the local level, and provide both technical and financial resources and assistance to municipalities and Conservation Authorities in developing such plans.

Part 6: Instruments

Instrument Classification

Recommendation 27

The ministers of MNR, MNDM and MCCR should ensure that their instrument classification regulations are finalized as swiftly as possible, in a manner consistent with the purposes of the *EBR*.

Part 7: Other Legal Rights

Accessible Information

Recommendation 28

The ministers of MOE, MNR, MNDM, MMAH and MCCR should make available to applicants and their counsel appropriate information and expert opinions when they apply under the *EBR* for leave to appeal, instead of requiring the applicants to request this information under the *Freedom of Information and Protection of Privacy Act*.

Part 8: Decision-Making Process

Recommendation 29

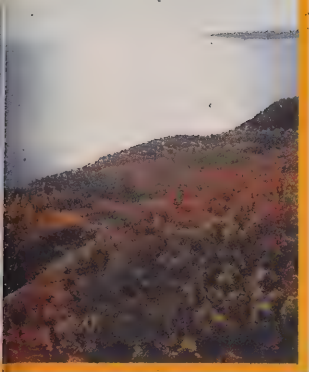
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- Ministries should post decision notices on the Registry promptly after decisions are made.

Recommendation 30

Ministries are encouraged to consider as well the following measures in planning and implementing *EBR* notice and comment procedures:

- Whenever possible, ministries should include the actual text of proposals for new regulations and policies in Registry postings. Where the text is not included, ministries should clearly indicate whether further written information on proposals is available, and if it is, where.
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- Where decisions are exempted from Registry posting requirements, ministries should consider posting information notices on the Registry to keep the public informed about environmental decision-making to the greatest extent possible.



Glossary of Terms

This glossary includes words that are defined according to their meaning in the *Environmental Bill of Rights* and as they are used in this Annual Report.

Accelerated Reduction/Elimination of Toxics (ARET) A voluntary program developed in the mid-1990s by Canadian industries and Environment Canada to challenge companies to eliminate gradually and/or reduce certain persistent, bioaccumulative and toxic substances. Participating companies voluntarily agree to pursue ARET target goals and objectives, but there are no sanctions against signatories if they fail to meet the goals of ARET.

act A law passed by the Ontario Legislature that expresses the will of the Legislature.

aggregate Gravel, sand, clay, earth, shale, stone and rock.

alternative service delivery The delegation or sharing of responsibilities for delivering services, developing policies, or regulating industries that were previously government responsibilities. Can include many different kinds of partnership or power-sharing arrangements between governments, corporations, voluntary or industry organizations, and individuals (examples include cost recovery, joint ventures, privatization, and self-regulation).

ambient air Outdoor air. Not air enclosed within a building or chimney, or air within a plume of smoke. See also ambient air quality criteria.

ambient air quality criteria (AAQC) For many pollutants, Ontario has established ambient air quality criteria (or AAQC). They are generally set at the level below which no adverse effect is observed on people or the environment. AAQCs are used as guides and are not enforceable.

appeal body A tribunal to which an appeal or application for leave to appeal is referred. For example, appeals under the *Environmental Protection Act* are referred to the Environmental Appeal Board.

Application for Investigation An EBR process that allows two Ontario residents to apply together to ask a ministry to investigate if they think someone is violating an environmentally significant act, regulation or instrument.

Application for Review An EBR process that allows two Ontario residents to apply together to ask a minister to review existing acts, regulations, instruments or policies if they think the environment is not being protected, or to establish new acts, regulations or policies to protect the environment.

aquifer An underground water-bearing layer of rock or sand that has enough water to serve as a source of groundwater.

Area of Natural and Scientific Interest (ANSI) An area of land and water containing natural landscapes or features that has been identified by MNR as having life science or earth science values important for natural heritage protection, appreciation, scientific study or education. ANSIs may be located on public or private land, and are intended to complement the provincial parks system. Unlike provincial parks, ANSIs are not protected by legislation.

Areas of Concern (AOCs) Locations along the Great Lakes with toxic substance problems, identified in 1985 by the International Joint Commission (IJC), an organization of Canadian and U.S. federal, provincial and state governments along the Great Lakes.

backdrop regulation Supplemental regulations passed by government to support the achievement of goals and programs set out in voluntary agreements or codes. Backdrop regulations may apply to the entire industry, or only to non-participants in the voluntary scheme. Such regulations may be called for in order to provide sufficient coverage of an industry or to provide for enforceable sanctions.

Better, Stronger, Clearer (BSC) A report released by the Ministry of the Environment in November 1997 as part of its Regulatory Review project. Outlines many proposed changes to MOE regulations. See also **Responsive Environmental Protection, MOE Regulatory Review Project**.

bump-up, bump-up request Where an undertaking is subject to a class environmental assessment, a person may request that the Minister of the Environment "bump-up" the undertaking to a full environmental assessment. See also **class environmental assessment and environmental assessment**.

certificate of approval A permit issued by a ministry under a specific provision in an act or regulation that allows the discharge of a limited volume of polluting substances, according to the terms and conditions set out in the permit.

class environmental assessment A class environmental assessment describes an environmental assessment procedure which applies to **undertakings** that are part of a group of similar undertakings (for example, highway construction projects or forest management planning processes). The procedures are less extensive than for individual (or full) environmental assessments, although a request to "bump-up" to an individual assessment may be made. (See also **bump-up, bump-up request**.)

Conservation Authority A public agency established under the *Conservation Authorities Act* to further the conservation, restoration, development and management of natural resources such as rivers, streams and public lands, within an area over which the Authority is granted jurisdiction. There are 38 Conservation Authorities in Ontario.

Crown land Land in Ontario that is public land under the jurisdiction of the provincial government, including land under water.

decision The use of discretion by the minister or delegated staff of a prescribed Ontario government ministry in relation to an environmentally significant proposal.

dioxin Common term for 2,3,7,8-tetrachlorodibenzo-para-dioxin, thought to be the most toxic of 75 different dioxins. Identified as a carcinogen in animal tests. Dioxin is produced in very small amounts as a by-product of several industrial processes and is sometimes released when plastics are burned in an uncontrolled manner.

District Land Use Guidelines (DLUGs) Land use plans approved by MNR in 1983. The guidelines identified land uses for **Crown land** in MNR's administrative Districts. These prescribed land uses provided guidance for resource managers in identifying where various resource management activities should take place. For private lands, the guidelines included direction that attempted to influence the use, management and protection of natural resource through municipal planning.

ecological system, ecosystem A community of interdependent plants and animals, together with the environment they inhabit and with which they interact.

employer reprisal protection The protection provided by the *EBR* for employees who may be dismissed, penalized, disciplined, coerced, intimidated or harassed by their employers for reporting environmental violations or participating in public processes under the *EBR*.

environment The air, land, water, plant life, animal life and ecological systems of Ontario.

environmental assessment An analysis, report, or body of evidence, relating to a specific project or development, that includes a description of the expected environmental impacts of the project, actions that could prevent or mitigate these environmental impacts, and alternative methods of carrying out the project. The term "environmental assessment" has a more specific meaning in legislation such as the *Environmental Assessment Act*.

Environmental Bill of Rights (EBR) A statute of Ontario, S.O. 1993, c. 28, that came into effect in Ontario in February 1994, which recognizes that the Ontario government has the primary responsibility for protecting, conserving and restoring the natural environment, but also recognizes that the people of Ontario have the right to participate in government decision-making and to hold the government accountable for those decisions. The *EBR* provides a number of new ways for the residents of Ontario to participate in environmental decision-making.

environmental management system (EMS) A system which sets out practices and procedures to develop and implement the environmental policies, objectives, and targets of an organization.

Environmental Registry A computerized bulletin board established under the *EBR* to provide information about the environment to the public in English and French. This information includes: the text of the *EBR*; general *EBR* information; the ministries' Statements of Environmental Values; summaries of proposed acts, regulations, policies and instruments; notices of appeals of instruments and appeal decisions; notices of court actions and final results; and application forms for reviews and investigations.

environmentally significant Factors to be considered in determining environmental significance include the measures required to prevent environmental harm, the geographic extent of environmental harm, and the public and private interests involved. Environmental significance is determined by looking at the potential effects of a proposal on the sustainable use of resources, the protection and conservation of biodiversity, pollution prevention and healthy communities. These are the types of government decisions that are subject to the public participation requirements of the *EBR*.

exception The *EBR* provides several types of exceptions to the requirements to provide public notice of a proposal. For example, policies, acts or regulations that are predominantly financial or administrative in nature are excepted.

forest regeneration The renewal of a tree crop by natural (self-sown seed or by vegetative means) or artificial means (seeding and planting).

geographic information system (GIS) A computerized information system that stores data based on geographic reference points. GIS allows data to be easily sorted, retrieved, mapped, analysed and modelled.

groundwater Water that exists beneath the earth's surface and flows through geological formations such as sand layers, porous rock layers or fractured rock layers.

harm to a public resource action The right under the *EBR* to sue an individual or company which is violating, or is about to violate, an environmental act, regulation or instrument and is harming, or will harm, a public resource.

hazardous waste Waste that is harmful to health or to the environment because of its physical characteristics, quantity, or concentration; can be toxic, corrosive, ignitable, reactive, or infectious.

inhalable particulates Microscopic airborne particles which are a component of smog and are small enough to be inhaled. See also **smog** and **PM10**.

instrument Any legal document issued under an act, including a permit, licence, approval, authorization, direction or order, which must be granted before companies or individuals can carry out activities that will have a significant effect on the environment.

instrument classification The requirement in the *EBR* that certain ministries prepare a regulation to classify proposals for instruments as Class I, II or III proposals according to their level of environmental significance, public notice and participation requirements, and the potential for public hearings to be held.

instrument holder The individual or business that has an instrument issued to it.

land use planning Includes identifying problems, defining objectives, collecting information, analysing alternatives, and determining a course of action for the uses of land within a geographical area.

Lands for Life A new planning process for **Crown land** and natural resources announced by MNR in early 1997. The Lands for Life planning area covers 46 million hectares across central Ontario, and is divided into three regions.

leave to appeal The process under the *EBR* of requesting permission from an appeal body to appeal a ministry decision to grant an instrument.

Memorandum of Understanding (MOU) A document setting out the terms of a relationship between two or more organizations. MOE has entered into several Memoranda of Understanding (MOUs) establishing joint

pollution prevention projects with industry organizations. See also **voluntary agreements**.

MOE Regulatory Review Project MOE's review of its environmental regulations, which commenced in October 1995. Two discussion papers have been published outlining the review. For information on those papers, see **Responsive Environmental Protection** and **Better, Stronger, Clearer**.

nitrogen oxides (NOx) Air pollutants that contribute to smog and acid rain.

old growth Old growth forests are ecosystems characterized by the presence of old trees with their associated plants, animals, and ecological processes. They show little or no evidence of human disturbance.

ozone Ozone, a molecule composed of three atoms of oxygen, serves an important role in the earth's ozone layer by insulating the planet from excessive ultra-violet radiation. But at ground-level, ozone is harmful to health. Ground-level ozone (produced largely through combustion in automobiles) is a component of smog. See also **smog**.

PM10 Small inhalable particulates of under 10 micrometres in diameter. They can penetrate lungs more deeply than larger particulates, affecting sensitive groups like children and people who experience respiratory difficulties. (See also **inhalable particulates**.)

point of impingement standards Under an Ontario regulation (O.Reg. 346), a point of impingement is a theoretical maximum concentration of a pollutant when it contacts the facility's property line. In Ontario, emissions limits included in certificates of approval are established based on point of impingement standards rather than top-of-the-stack (or point of emission) standards. See also **certificate of approval**.

policy Under the *EBR*, a policy is a program, plan or objective and includes guidelines or criteria to be used in making decisions about the issuance, amendment or revocation of instruments.

polychlorinated biphenyls (PCBs) A class of synthetic organic compounds which are toxic and very persistent in the environment. PCBs accumulate in living organisms over their lifetimes.

polyvinyl chloride (PVC) A plastic that releases hydrochloric acid and dioxin when burned.

prescribed (ministries, acts, regulations or instruments) The various ministries, acts, regulations or instruments that are specified in the regulations made under the *EBR* and to which the provisions of the *EBR* apply.

public nuisance action A public nuisance is an interference with public rights, or can arise from the commission of many private nuisances. Prior to the passage of the *EBR*, the right of an Ontario resident to conduct a law-suit for damage to their use and enjoyment of land from a public nuisance was limited. The *EBR* permits anyone who experiences direct economic or personal loss because of a public nuisance causing environmental harm to sue for damages or other personal remedies.

quarry dewatering Where extraction of sand and gravel takes place below the water table, water seeps into the quarry. To allow extraction, quarry operators must pump the water away from their quarry and into nearby bodies of water. Dewatering can lower the level of underground aquifers, causing adverse environmental impacts and threatening the water supplies of nearby well users.

Regional Land Use Strategies (RLUS) Phase 1 of the MNR's new land use planning process, **Lands for Life**, will result in three RLUSs. Each RLUS will include: broad objectives for natural resources; land use designations for general use, forest management, parks and protected areas; and **resource-based tourism**; and strategies for other issues such as fishing and hunting. The RLUSs will also provide direction for more detailed land use and resource management planning in Phase 2, Sub-Regional Land Use Planning.

regulation A legislative regulation, rule or order made or approved under an act and having the force of law when in effect.

Remedial Action Plans (RAPs) RAPs work to reduce pollution in Areas of Concern identified under the Canada-United States Great Lakes Water Quality Agreement. They are prepared and implemented through cooperation among federal, provincial, and municipal governments. Coordinators, assisted by Public Advisory Committees, manage each RAP.

resource-based tourism A sector of the tourism industry which provides tourists with opportunities to experience nature in a remote setting.

Responsive Environmental Protection (REP) A document released in July 1996 by the Minister of the Environment as an early step in its Regulatory Review Project. The ministry proposed an overhaul of many of Ontario's environmental regulations and requested comments through the Environmental Registry. In November 1997 the ministry issued a follow-up report (**Better, Stronger, Clearer**) which includes an outline of planned changes to the regulatory system. See also **MOE Regulatory Review Project**.

review period The period of time, January 1, 1997 to December 31, 1997, covered by the third Annual Report of the Environmental Commissioner of Ontario.

smog A mixture of noxious gases and suspended particles from motor vehicles, industry, and other sources. Large cities have the greatest problems with smog, especially during the summer.

standardized approval The *Environmental Protection Act* and the *Ontario Water Resources Act*, after a 1997 amendment, allow for the creation of standardized approval regulations (SARs). Activities regulated by the SARs would no longer require individual **certificates of approval** for each site. MOE says the activities which would be regulated through SARs are predictable, controllable, and have well-understood environmental impacts. No standardized approval regulations had been made by the end of 1997.

Statement of Environmental Values (SEV) A ministry statement, required by the *EBR*, that explains how the purposes of the *EBR* are to be applied when environmentally significant decisions are made in the ministry and how consideration of the purposes of the *EBR* should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry.

sustainability The concept that economic development must take full account of the environmental consequences of economic activity.

tritium Tritium is a radioactive form of hydrogen that is recognized as a carcinogen. It occurs naturally, but the major source in Ontario is from water and air emissions from nuclear energy plants operated by Ontario Hydro.

undertaking An enterprise or activity, or a proposal, plan or program. Environmentally significant undertakings of the Ontario government, municipal governments, and some private persons (designated by regulation) are subject to requirements of the *Environmental Assessment Act*.

unposted decision A decision that may be **environmentally significant** made by a ministry prescribed by the *EBR* which was not posted on the **Environmental Registry** for public comment.

volatile organic compounds (VOCs) Organic compounds that evaporate easily. They reach the atmosphere largely through combustion in automobiles, but also from the evaporation of solvents, paint, and dry-cleaning fluids.

voluntary agreements (VAs) Agreements made between government and industry associations or individual companies which include commitments to environmental values, goals or targets. These commitments are voluntary and are generally not enforceable.

watershed An area of land that drains into a river and its tributaries.

watershed groundwater management The management of groundwater resources on the basis of watershed boundaries rather than municipal or other jurisdictional boundaries.

wood supply agreements Under s. 25 of the *Crown Forest Sustainability Act*, the Minister of Natural Resources may, with the approval of Cabinet, enter into an agreement to supply a person with forest resources.

Abbreviations and Acronyms

AAQC	ambient air quality criteria
ACES	Advisory Committee on Environmental Standards
ANSI	Area of Natural and Scientific Interest
AOC	Area of Concern
ARET	Accelerated Reduction/Elimination of Toxics
BOD	Biochemical oxygen demand
BSC	Better, Stronger, Clearer
CFSA	<i>Crown Forest Sustainability Act</i>
CCME	Canadian Council of Ministers of the Environment
DLUGs	District Land Use Guidelines
EAA	<i>Environmental Assessment Act</i>
EBR	<i>Environmental Bill of Rights</i>
EMS	environmental management system
GIS	geographic information system
MCzCR	Ministry of Citizenship, Culture and Recreation
MCCR	Ministry of Consumer and Commercial Relations
MEDTT	Ministry of Economic Development, Trade and Tourism
MISA	Municipal Industrial Strategy for Abatement
MOE	Ministry of the Environment
MOH	Ministry of Health
MOL	Ministry of Labour
MBS	Management Board Secretariat
MMAH	Ministry of Municipal Affairs and Housing
MNR	Ministry of Natural Resources
MNDM	Ministry of Northern Development and Mines
MTO	Ministry of Transportation
NO_x	nitrogen oxides
OMAFRA	Ontario Ministry of Agriculture, Food and Rural Affairs
OWRA	<i>Ontario Water Resources Act</i>
PCBs	poly-chlorinated biphenyls
PVC	polyvinyl chloride
RAPs	Remedial Action Plans
REP	Responsive Environmental Protection
RLUS	Regional Land Use Strategy
SEV	Statement of Environmental Values
TSSA	Technical Standards and Safety Authority
VAs	voluntary agreements
VOCs	volatile organic compounds

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